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IMPLEMENTATION OF THE PROMPT PAYMENT ACT: IMPACT ON SMALL BUSINESS CONTRACTORS

MF 222 COMPL 374

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

IMPLEMENTATION OF THE PROMPT PAYMENT ACT: IMPACT ON SMALL BUSINESS CONTRACTORS

JUNE 19, 1986

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IMPLEMENTATION OF THE PROMPT PAYMENT ACT: IMPACT ON SMALL BUSINESS CONTRACTORS

THURSDAY, JUNE 19, 1986

U.S. SENATE,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The committee met, pursuant to notice, at 10:22 a.m., in room SR-428A, Russell Senate Office Building, Hon. Paul S. Trible, Jr. (acting chairman), presiding.

STATEMENT OF HON. PAUL S. TRIBLE, JR., A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator TRIBLE [acting chairman]. Good morning, ladies and gentlemen. This is one of those mornings when this Senator has three hearings all scheduled at one time, including a major markup on a products liability bill. So I apologize for my late arrival, but I thank you for being here this morning.

I want to welcome all of you to this hearing to review the implementation of the Prompt Payment Act of 1982. I chaired a hearing on the implementation of this act in Norfolk, VA, in December 1985, and today's hearing builds on that hearing record.

At the Norfolk hearing, witnesses indicated a number of serious problems with the implementation of the act. Agencies have delayed acceptance of invoices. They have waited until the last possible moment to pay their bills. They have refused to pay legally mandated interest and, not infrequently, early discounts are taken long after the discount period has expired.

Finally, the agencies have not regularly complied with the act in respect to progress payments. In response to the problems identified at this first hearing, I, along with Senators Weicker, Bumpers, and 18 other Members of the Senate, have cosponsored and introduced Senate bill 2479, the Prompt Payment Act Amendments of 1986.

Today's hearing continues the original inquiry into the implementation problems and possible remedies with a focus on this particular piece of legislation. In addition to those people doing business with the Federal Government, we will hear from two groups not included in the scope of the Prompt Payment Act. Health care providers and subcontractors, as well as the Health Care Financing Administration will testify.

So I welcome you this morning, and I look forward to the testimony.

Our first panel is composed of representatives from the coalition for prompt pay. Mr. Pattie, would you come forward with Mr. Brewster.

[The prepared statements of Senators Weicker and Dixon follow:]

OPENING STATEMENT OF SENATOR LOWELL WEICKER, JR.

TODAY, THE COMMITTEE ON SMALL BUSINESS CONVENES TO CONDUCT OVERSIGHT HEARINGS ON THE IMPLEMENTATION OF THE PROMPT PAYMENT ACT OF 1982, PUBLIC LAW 97-177. THESE HEARINGS ARE A FOLLOW-ON TO THE COMMITTEE FIELD HEARING HELD IN NORFOLK, VIRGINIA ON DECEMBER 2, 1982, WHICH WERE CHAIRED BY SENATOR TRIBLE. HE HAS TAKEN THIS VERY IMPORTANT SMALL BUSINESS ISSUE AND RUN WITH IT. HIS EFFORTS ARE COMMENDED IN THE STATEMENTS OF ALL OF TODAY'S WITNESSES, AND NOW I WANT TO ADD MY THANKS FOR HIS HARD WORK.

IT IS ESPECIALLY FITTING THAT THE SMALL BUSINESS COMMITTEE HAS TAKEN THE LEAD IN CONDUCTING OVERSIGHT HEARINGS ON THE PROMPT PAYMENT ACT, FOR IT WAS OUR COMMITTEE THAT STARTED THE LEGISLATIVE EFFORT THAT LED TO THE ENACTMENT OF THE PROMPT PAYMENT ACT IN MAY OF 1982. WITH THE STRONG SUPPORT OF SENATOR JOHN C. DANFORTH AND LAWTON CHILES, THEN RANKING CHAIRMAN AND RANKING MINORITY MEMBER OF THE GOVERNMENTAL AFFAIRS SUBCOMMITTEE OF JURISDICTION, THE SMALL BUSINESS COMMUNITY AND THEIR FRIENDS ON THIS COMMITTEE WERE ABLE TO PASS THE ACT DESPITE STRONG OPPOSITION FROM THE VARIOUS PROCUREMENT AGENCIES.

THESE FEDERAL AGENCIES, AND THE THOUSANDS OF SMALL FIRMS THAT DO BUSINESS WITH THEM, HAVE NOW HAD THREE COMPLETE FISCAL YEARS OF BILLPAYING EXPERIENCE SINCE THE ACT BECAME EFFECTIVE ON OCTOBER 1, 1982. THE THREE ANNUAL REPORTS TO THE CONGRESS FROM THE OFFICE OF MANAGEMENT AND BUDGET (OMB) REFLECT THAT THE ACT HAS BEEN QUITE SUCCESSFUL IN SUBSTANTIALLY IMPROVING THE TIMELINESS OF PAYMENTS TO THOSE FURNISHING SUPPLIES, SERVICES, OR CON-

STRUCTION TO GOVERNMENT. ACCORDING TO OMB'S REPORTS, THE AGENCIES ARE PAYING 99 PERCENT OF THEIR BILLS ON TIME. TODAY'S TESTIMONY WILL STONGLY SUGGEST THAT THIS CLAIM MAY BE A SUBSTANTIAL OVERSTATEMENT OF SUCCESS, BUT THERE CAN BE NO QUESTION THAT THE ACT HAS BROUGHT ABOUT A VERY SUBSTANTIAL IMPROVEMENT IN THE DISMAL SCENE WE FOUND IN 1981.

AS WE SHALL HEAR TODAY, SOME IN THE CONTRACTING AGENCIES HAVE SEEMINGLY SPENT MORE TIME TRYING TO DEVISE WAYS TO AVOID THE ACT'S REQUIREMENTS, MOST ESPECIALLY ITS INTEREST PENALTIES. SMALL BUSINESS GOVERNMENT CONTRACTORS, LIKE THOSE THAT WILL BE TESTIFYING TODAY, CONTINUE TO REPORT PERSISTENT IMPLEMENTATIONAL PROBLEMS WHICH HAVE EFFECTIVELY THWARTED FULL ATTAINMENT OF THE ACT'S OBJECTIVES AND DEPRIVED THEM OF THE ACT'S PROTECTION. WE ARE DETERMINED TO EFFECTIVELY CLOSE THESE LOOPHOLES.

TO THAT END, SENATOR TRIBLE DEVELOPED THE "PROMPT PAYMENT ACT AMENDMENTS OF 1986", WHICH HE INTRODUCED ON MAY 21, 1986, ALONG WITH TWENTY ORIGINAL COSPONSORS, INCLUDING MOST OF THE MEMBERS OF THIS COMMITTEE. S. 2479 ALSO HAS THE STRONG SUPPORT OF MANY OF THE SPONSORS OF THE ORIGINAL PROMPT PAYMENT ACT, INCLUDING SENATORS DANFORTH AND CHILES. WHILE THIS BILL IS WITHIN THE JURISDICTION OF THE GOVERNMENTAL AFFAIRS COMMITTEE, AND ITS OVERSIGHT OF GOVERNMENT MANGEMENT SUBCOMMITTEE, WE WILL BE RECEIVING TESTIMONY ON THE PROVISIONS OF S. 2479. SENATOR BUMPERS AND I INTEND TO FORMALLY TRANSMIT THE RECORD FROM THIS HEARING AND THE PREVIOUS FIELD HEARING TO SENATORS COHEN AND LEVIN, CHAIRMAN AND RANKING MINORITY MEMBER OF THE SUBCOMMITTEE OF JURISDICTION, TO FACILITATE THEIR CONSIDERATION OF S. 2479.

PART OF TODAY'S HEARING WILL BE DEVOTED TO THE VERY SEVERE PAYMENT DELAYS BEING EXPERIENCED BY PROVIDERS AND SUPPLIERS UNDER THE MEDICARE PROGRAM. WHAT IS ESPECIALLY UNIQUE, AND ANNOYING ABOUT THIS SITUATION, IS THAT IT IS THE DIRECT AND EXPECTED RESULT OF POLICY GUIDANCE ISSUED BY THE HEALTH CARE FINANCING ADMINISTRATION. THIS ACTION HAS BROUGHT VERY GREAT FINANCIAL HARDSHIP ON MANY SMALL PROVIDERS AND SUPPLIERS UNDER THE MEDICARE PROGRAM. WE WILL HEAR FROM THEIR REPRESENTATIVES TODAY ALONG WITH TESTIMONY CONCERNING WHAT HCFA INTENDS TO DO TO REVERSE THIS UNACCEPTABLE SITUATION.

OUR FIRST PANEL CONSISTS OF KENTON PATTIE, REPRESENTING THE COALITION FOR PROMPT PAY AND CHRIS BREWSTER. KENTON VIRTUALLY NEEDS NO INTRODUCTION AMONG THOSE WHO HAVE FOUGHT THE FIGHT FOR THE ENACTMENT AND IMPLEMENTATION OF THE PROMPT PAYMENT ACT. HE HAS CONTINUOUSLY BEEN IN THE FOREFRONT. CHRIS BRINGS A UNIQUE PERSPECTIVE IN THAT HE SERVED AS STAFF DIRECTOR TO JACK DANFORTH'S GOVERNMENTAL AFFAIRS SUBCOMMITTEE DURING THE DRAFTING AND LEGISLATIVE CONSIDERATION OF THE BILL THAT BECAME THE PROMPT PAYMENT ACT OF 1982.

WE WELCOME YOU AND ALL THE WITNESSES TO THESE IMPORTANT HEARINGS. IT IS MY INTENTION TO TURN THE GAVEL OVER TO SENATOR TRIBLE AND LET HIM CONTINUE THE FINE WORK THAT HE HAS BEGUN.

ALAN J. DIXON
ILLINOIS

United States Senate
WASHINGTON, DC 20510

JUNE 19, 1986

STATEMENT BY SENATOR ALAN J. DIXON

SENATE COMMITTEE ON SMALL BUSINESS

IMPLEMENTATION OF THE PROMPT PAYMENT ACT, P.L. 97-177

MR. CHAIRMAN, LET ME COMMEND YOU FOR YOUR EXPEDITIOUS ACTION IN CONVENING THIS HEARING ON THE IMPLEMENTATION OF THE PROMPT PAYMENT ACT.

SMALL BUSINESS LED THE FIGHT FOR PASSAGE OF THIS LEGISLATION, WHICH WAS SIGNED INTO LAW IN 1982. THE PURPOSE OF THIS LAW WAS TO FORCE FEDERAL AGENCIES TO PAY THEIR BILLS ON TIME. THE DEVICE EMPLOYED TO ACHIEVE THIS GOAL WAS A REQUIREMENT, IMPOSED UPON FEDERAL AGENCIES, TO PAY INTEREST ON OVERDUE BILLS.

WHILE THE PROMPT PAYMENT ACT HAS SUBSTANTIALLY IMPROVED THE GOVERNMENT'S PAYING PRACTICES, PROBLEMS STILL REMAIN. AMONG THE MOST COMMON PROBLEMS INCLUDE AGENCIES MAKING PAYMENTS AFTER THE PAYMENT DATE SPECIFIED IN THEIR CONTRACTS OR AFTER THE TIMES SPECIFIED BY THE ACT, WITHOUT THE PAYMENT OF INTEREST, AGENCIES TAKING DISCOUNTS OFFERED BY CONTRACTORS FOR "FAST PAYMENT" ALTHOUGH ACTUAL PAYMENT IS MADE AFTER THE EXPIRATION OF THE SPECIFIED "DISCOUNT PERIOD", AND AGENCIES ROUTINELY PAYING THEIR INVOICES LATE IN THE FIFTEEN DAY "GRACE PERIOD".

OTHER PROBLEMS EXIST WHICH I AM SURE WILL BE IDENTIFIED BY TODAY'S WITNESSES.

BUSINESSES, ESPECIALLY SMALL BUSINESSES, OFTEN INCUR A SIGNIFICANT AMOUNT OF EXPENSE IN PROVIDING FOR

PRODUCTS OR SERVICES UNDER CONTRACT WITH FEDERAL AGENCIES. IT SEEMS ONLY FAIR THAT THE OBLIGATIONS OF THESE AGENCIES ARE SETTLED ON A TIMELY BASIS SO AS TO MINIMIZE THEIR ACCOUNTS RECEIVABLE INTERVAL.

I WAS AN ORIGINAL CO-SPONSOR OF SENATOR TRIBLE'S LEGISLATION, THE PROMPT PAYMENT ACT AMENDMENTS OF 1986, INTRODUCED ON MAY 21. THIS LEGISLATION WILL PROVIDE THE MODIFICATIONS NECESSARY TO CLOSE EXISTING LOOPHOLES AND INSURE THAT OUR SMALL BUSINESSES RECEIVE CONTRACT PAYMENTS IN A TIMELY FASHION. WE HAVE SIMILAR PROVISIONS IN ILLINOIS LAW, AND I AM GLAD TO REPORT THAT THESE PROCEDURES WORK WELL IN MY STATE. WE SHOULD DO THE SAME AT THE FEDERAL LEVEL.

STATEMENT OF KENTON PATTIE, STAFF VICE PRESIDENT, INTERNATIONAL COMMUNICATIONS INDUSTRIES ASSOCIATION, REPRESENTING THE COALITION FOR PROMPT PAY, FAIRFAX, VA

Senator TRIBLE. Good morning.

Mr. PATTIE. Good morning, Senator.

Senator TRIBLE. Without further ado, why do we not begin your testmony.

Mr. PATTIE. We are very honored on behalf of the coalition to be here. It was in this very room that the Prompt Payment Act of 1982 was born. I see some of the staff members, Bob Dotchin and other staff members who were involved, and I know Senator Weicker held a hearing in this room at which a constituent of his came and talked about the problem quite extraneously to the hearing. So it is a historic moment for a lot of the folks in the room whom I represent today.

We are very pleased with the bill that you introduced, Senator, and very grateful to the 23 Senators who joined with you in supporting this bill as cosponsors. I think, in reading it, that you have listened very well to the hearing that you held in Norfolk. This is the third congressional hearing, House and Senate, since the 1982 act was passed, and this is the first time that a solution to some of the outstanding problems has been proposed.

I think you have done a very good job in listening and proposing a very firm and fine solution.

Senator TRIBLE. You are off to a good start, Mr. Pattie. [Laughter.]

Mr. PATTIE. Thank you very much.

Senator TRIBLE. I appreciate those kind words.

Mr. PATTIE. I think that, while I represent a lot of businesses that are concerned with problems, I think that we are joined together today in trying to do something for the Government, to make it more efficient, to make it more responsive, to get better prices for the Government, to get better competition. And while we talk a lot about helping businesses and business cash-flow today, I do not think we should lose track of the fact that we really are trying to help the Government to do a better job in serving the people and itself.

I would like to say that I know that OMB, the Office of Management and Budget, is going to testify during this hearing. We do not feel in any way that we are adversaries, that there is an adversarial situation here. I have worked with John Lordan and his staff at the Office of Management and Budget. We have found them to be very responsive. They have done a number of things at our suggestion administratively, things that were within their realm to do.

For example, following our testimony at your hearing in Norfolk, Senator, they took our statement which had a litany of problems that we had experienced with Government agencies and sent it out to numerous Federal finance officials all through the Government, which was I thought an exemplary move on their part.

They also changed the annual report to take into account the fact that they were originally listing just Defense, and we suggested they list not only Defense but what amount is it Navy? Is

Army? Is Marines? And they broke that down in the annual report this year, which I think is a very good step forward.

They have tried. They have been accessible to us, and we do not feel we are adversaries, but in fact they have really tried to do a good job for President Reagan and the administration in following through with the intent of this act.

I might also mention that since the passage of this law in 1982, 44 States, plus the District of Columbia, followed the lead of this committee and this Congress in adopting the law, and we are very pleased that you have created and begun a national movement, a prompt-pay movement across the country.

There have been loopholes that have been taken advantage of by Government agencies, and I do not think that anything we are going to say today is a surprise to OMB or any of the agencies. In fact, a number of the people following John Lordan's mailing in December called me to say that many of the things that we said, the loopholes that we had pointed out, were true. However, they point out that they feel that they are fulfilling the intent of the law, that the problem is with the law and not with the OMB regulations. So I think we are very correctly doing the proper thing today, and that is in dealing with an adjustment in the act itself.

I think from the standpoint of OMB, that what they really need to do with these agency people is to be able to turn to them and say, "Look, this is what Congress said." OMB had many years before the Prompt Payment Act, many opportunities to resolve this problem, and were unable to do it until we had the act. Now we have the loopholes, and I think once again OMB needs the support that you are offering them through your bill to get the job done.

They need to be able to turn around to the agencies. They do not really have any power over the agencies other than admonishing them, pressing them, urging them, and shoving them. This bill is going to give them the stick to get the job done. I think that is what this learning is all about.

With respect to the delays that we have received in the receiving area—receiving, acceptance, and certification—that is a problem that we discussed with you in Norfolk. Your bill has done an outstanding job in responding to that problem. You have months going by prior to the beginning of the 30-day clock ticking in which companies are not being paid, in which there is no response to the request to a company to "what has happened to my payment?" And your bill says: "OK, if you all are going to do that, what we are saying is you need to get that receiving/acceptance/certification activity completed in 5 days, or to tell the company in advance that you cannot do it in 5 days. Put it in the contract."

We have already found, as part of my supplementary material that I have included with my testimony, that some of the agencies are already able to do this and have stated for example a mandatory 7-day time period in which they can accomplish receiving/acceptance/certification. So I do not think we are asking them to do anything unusual.

Also, I should point out that the OMB Circular A-125 has made a try at what you are trying to do through the statute. They have tried to do it by regulation. Many of the agencies have obviously not complied with the OMB circular, and we regret that. I know OMB must regret it also.

Of course the problem is the receiving/acceptance activity takes so long because there is no pressure exerted by the present law. There is no penalty to be paid for taking a long time to get around to receiving the goods. So the agency just simply says, "well, we began your 30-day clock when we got all the paperwork finally accumulated in the finance office." There is no penalty to be paid by the procurement office, or anybody else, and I think your bill very rightly is going to put pressure on these people to move the paperwork forward.

I might mention that by imposing this 5-day standard that it is our feeling that if an agency, for whatever reason, feels that it needs to go beyond the 5 days, that that 5 days should be taken out of the 30 days. That is a model that has been adopted by Florida, Illinois, and Mississippi in their State legislation, that if they go beyond the 5 days and say they take another 5 days, fine, well then you have only got 25 days to make the payment.

Some might say, well, do you think the Government could really get around to issuing the checks? Following John Lordan's mailing from OMB in December. I had at least seven or eight finance officers from Federal agencies say: "You know your problem is with OMB. They [OMB] tell us we have to pay the bill on or about the 30th day. We could pay the bills in 5, 7, or 8 days. As soon as we get all the paperwork accumulated, all we have to do is issue the check. The reason that we have some of these late payments is we get to, on or about the 30th day and something goes wrong, and we have to let it go a little bit." They could make the payments in 25 days. If procurement takes too long to move the paperwork up, finance could make the payment in 15 days, and many of them could make the payment in 10 days.

So I do not feel that imposing—if they take longer than the 5 days—that buying into the time they have for paying the bill would impose any major burden on the Federal Government.

I would like to talk a minute about the grace period, the 15-day grace period. We refer to it as the "bonus buffer days." It is like a defense demilitarized zone that is available there for the agencies in the event their computer goes wrong, or somebody is on detail, or for whatever reason. However, we have received evidence, as was mentioned in the testimony in Norfolk, that agencies were regularly paying after the 30th day, and I understand from talking to a number of them why, because they have got to pay on the 30th day, and things just seem to take longer than they ought to.

I think that it is long overdue that we eliminate this 15 days. If you look at the paper, Mr. Chairman, that I have prepared and provided to the staff—it is the OMB figures based on their annual report—you will see that most of the agencies, once they receive all of the paperwork, are able to accomplish the payment within the 30 days. As John Lordan will say, 99 percent of all the Government's bills are paid on time. Most of the agencies are able to get in within the 30-day cycle.

So there is no longer, in our opinion, a need for the 15-day buffer zone, and I think you very rightly in your bill call for the elimination of it. I think you have been very generous to them by phasing it out over a couple years' period. I think today if we eliminated it, their computers are geared to the 30 days. I do not think there is going to be any adjustment they have to make to their computers. They are geared to the 30th day. It is just a matter of when do they get out the check. This is not going to affect the date on which they calculate the interest, and that was the most critical refitting of the computers that they had to do in 1982.

So we congratulate you on that phase of the bill.

As far as not paying the interest automatically, I think it is a terrible frustration to companies to receive a check and not get the interest. I have included as a part of my testimony an example of that, a company that should have been paid in January of this year. They were paid very late, in March, for absolutely no reason apparent to anyone that I could find out in the calls that I made. No interest was paid. This is example No. 2 at the back of my testimony. I have no idea why they did not, but it is frustrating to the company.

People say, "my goodness, now I have to rebill them, I have to phone them up, who do I turn to?" It is a frustration, and I think you have very correctly addressed that problem in your bill.

You have also addressed the problem of progress payments. I can just say that it was with great astonishment that people from the construction industry realized after working so hard for the bill in 1982 that for some reason or other they were not going to benefit from it because so many of their payments that they received were progress payments. I think that at last you have addressed that. I know OMB tried through their regulation. I think it has been ineffectual. The agencies have not observed it. I think this is again an example of why we have to do it through legislation to strengthen OMB's arm, give them the stick to go out to the agencies and say, "Look, progress payments are subject to the Prompt Payment Act, and if you do not pay them on time you are subject to interest penalties."

With respect to the annual report that OMB files, it is certainly being improved. I think they have done a nice job. John Lordan has been very responsive to the ideas that have surfaced in your hearing in November, and some of the suggestions that our coalition has made. I think that what we need is not only, as properly stated in your bill, data on the situation where they make a payment but do not pay interest penalties. I think that is a very good provision in your bill. But we also need some data in that annual report on the time taken.

If it is going to be the 5-day standard as proposed by your bill, there should be a report on that time from the moment of receiving to the moment it arrives in the finance office. Again, the focus of the nonpayment of interest and the focus of OMB has been almost entirely on that period from the beginning of the count of the 30 days. We feel they should accumulate data on the period from the receipt. How long is it taking? What is the average length of time that it is taking to get goods that have been received around to the finance office to get the paperwork done, to get the accumulation of paperwork into the finance office?

We certainly recognize that the DD1155 and DD250 and other Government forms that are required or asked of vendors to use are very complicated forms. The 1982 act was responsive to that by saying that within 15 days the Government should have looked at an invoice. should have looked at the goods, and should have determined whether or not the payment could be made on time.

There is required in the act a 15-day notification of the company. However, I do not know of anybody—and I dare say if we took a poll of the various vendors that have accumulated in this room—no one has received a 15-day notification. I think the agencies have completely ignored this portion of the act. I think this is a very unfortunate thing. I do not know the exact solution to it, but I think we ought to consider putting some kind of teeth into that.

My feeling is that if the OMB report asks the agencies to indicate the number of 15-day notifications that they had made, that that would be a form of teeth, and that would be a useful approach to that particular problem.

We feel, because of the number of comments of a number of vendors, that they are frustrated in not knowing, "to whom should I turn?" They will talk to somebody at the fort. The fort will say, "You just have to play along with us, listen to us, work with us." And the vendor wants to know: "Who is the supervisor? Where do I go? I have done everything I can do. I have written five letters. I have made 10 phone calls. Now who do I turn to?"

That is when they call people like ourselves and the Small Business Committee here and say, "What do I do?" I think agencies should try to say: "We understand that it is difficult and complicated to deal with us, so here is the name of the top financial person." You will notice in one of the examples I gave that the General Services Administration is doing that, and I think the Navy has done that from time to time, to name somebody to whom you can turn.

I think the agencies should regularly tell the vendors who the top person is. We should use them as a court of last resort, but you need somebody to turn to, an ombudsperson of some sort to whom you can say, "Look, I have done everything I can. What can I do about this? I need to get this sorted out."

I like the agencies that have published booklets. I think Defense Logistics Agency, Navy, and others have done little booklets that say how to get paid by our agency. I think they are helpful. It seems incredible that we have to do that, but I think it is a useful service to the business community, and I think it is good Government to say, "Look, we want to deal properly with you. We want you to know how to deal with us, and here is the book on how to do it."

Senator **Trible**. Is it the Navy's booklet, Mr. Pattie, that indicates, "Do not worry if your check has not yet been received, that it is probably in the mail"?

Mr. **Pattie**. Yes, sir. That is the one. [Laughter.]

I think your bill is aimed at trying to stop that, and I think you will.

With respect to the testimony that you are going to receive later on concerning the long delays in Medicare payments, I got this problem right in the head when I ventured onto a talk show out in California on a radio program and I found that more than 50 percent of the calls were about the late payments for Medicare payments to medical vendors, drug companies, and all that sort of thing.

I provided in my testimony a solution to it that you might consider. I know there will be others testifying on the same thing. It is simply that:

> Fiscal intermediaries under the Medicare Program or any other intermediary of a Federal program which disperses Federal funds to providers of products or services shall be considered subject to the requirements of the Prompt Payment Act.

This is really modeled after a California provision that says very much the same thing. I think that problem could be resolved as an amendment to your very fine bill.

I know that a number of people have complained to us about the late payments by grantees who are also administering Federal funds. I know this problem was brought up when Senator Danforth and Chris Brewster were dealing with this back in 1982. I would like to recommend that you consider asking the General Accounting Office to study this problem. I also think in the study they should study not only the late payments by grantees using Federal funds, and obviously we spend millions of dollars in this manner, but also the problem that United Way and a number of universities have brought to us, which is that they are getting paid late by Federal agencies, and that is why they pay companies late. Let us get at the heart of that problem and see what solution we can come up with, rather than let it go on another 4 years before we solve it.

With respect to the subcontractors, I think they have a very valid problem. They have come to us. I know that I have met with John Lordan, with Dennis Lavallee, who represents a group of the subcontractors, plumbing, heating, and cooling contractors, and I know that OMB is aware of this problem. I do not believe that they can resolve this on their own. I think it is going to take some legislative response.

As suggested in my testimony, there are examples in 14 States where they have already worked on this type of legislation and have adopted it, assisting subcontractors, and we might well look at the ideas that have been proposed and adopted into law in 14 States.

We investigated the Miller Act, which is there to assist subcontractors with respect to bonding, however I have to report that after spending a day reading it, with my assistant, Cathie Burch, we concluded that there was not any way to use the Miller Act to solve the problem that we are confronted with with respect to the subcontractors. We have come back to the conclusion that if there is a solution, it could well be within your bill.

I also recommend that administrative remedies could accomplish the goal that we are seeking here. I have talked to vendors that say:

> I cannot talk to the procurement officer because he says he only deals with the prime contractor. I need to get some information. I need this information in order to properly present my request for payment.

I think the contracting officer should be authorized through this bill to hold meetings between subcontractors and prime contractors. I think they should be able to exchange information. I think Government space could be used to accomplish these meetings. I think some of these problems are often a failure to communicate, and I think that through an administrative procedure in this way we could help resolve that and lessen some of the tensions between the primes and their subs.

With respect to the calculation of interest penalties, I have included in my statement a discussion of that. I just feel that there is, because we have had some major adjustments in the interest rates recently—where the interest rate has changed by two points when the interest rate on the Prompt Payment Act was adjusted—that there should be a prohibition in the bill against agencies waiting until that two-point change has occurred. They should be discouraged by this act from doing that.

The goal of the act is prompt payment, and I understand cash management is to the Government's advantage, but waiting another 2 or 3 weeks until the interest rate goes down, and in this case everybody knows the interest rate is either going to go down or up because it is calculated on the historic interest rates that have occurred in the last few years. So it is not like we make the calculation based on a given day.

I raise finally an issue that is of concern to me. I noticed that at the hearing in December—you noticed it as well—that is, the failure of the Government to do what so many businesses today are doing—that is, use electronic funds transfer. We feel—small business, medium, and large business actually—that this system if ever adopted by the Federal Government would be to our advantage.

We would like to see the committee ask the Treasury Department and other Government agencies to study a way in which adoption of electronic funds transfer could be speeded up. I think this is something that is long overdue by the Federal Government. I am not an expert on it, but I know enough from the companies that I have talked to that it is being done in the business community, and the Government is well advised to try to do it.

Finally, I would just like to comment. We have just completed 57 meetings around the country of the White House Conference on small business, and that in 10 States small businesses felt that this was so important, this issue of amending and changing the Prompt Payment Act, that they have passed resolutions in support of changing the Prompt Payment Act. I have included some material in my testimony relative to that. Virginia was one of them, and I think this is evidence of the need for the bill that you have introduced.

Thank you very much, sir.

[The prepared statement of Mr. Pattie follows:]

THE PROMPT PAYMENT ACT:
S.2479 WILL RESULT IN FASTER PAY

by
Kenton Pattie
Director of Coalition for Prompt Pay
& Senior Staff Vice President of the
International Communications Industries Association

Statement to:

Senate Committee on Small Business

Hearing of June 19, 1986

Washington, D.C.

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STATEMENT BY
KENTON PATTIE
DIRECTOR, COALITION FOR PROMPT PAY
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INTERNATIONAL COMMUNICATIONS INDUSTRIES ASSOCIATION

Mr. Chairman:

It is a pleasure to appear before you and before this Committee. It was in this very committee room that the Prompt Payment Act of 1982 was launched and we have always found this Committee responsive to the cash flow problems of small businesses.

I am speaking this morning on behalf of the Coalition for Prompt Pay. I have attached a list of our members (Attachment 1). Our common goal today is to discuss S. 2479, which Senator Trible and many members of the Senate introduced on May 21, 1986. We are very grateful to all of the original sponsors and the cosponsors:

Senator Max S. Baucus of Montana
Senator David L. Boren of Oklahoma
Senator Dale L. Bumpers of Arkansas
Senator Lawton Chiles of Florida
Senator Thad Cochran of Mississippi
Senator Alfonse D'Amato of New York
Senator John C. Danforth of Missouri
Senator Alan J. Dixon of Illinois
Senator Charles E. Grassley of Iowa
Senator Tom Harkin of Iowa
Senator John Heinz of Pennsylvania
Senator John F. Kerry of Massachusetts
Senator Carl M. Levin of Michigan
Senator Mack Mattingly of Georgia
Senator John Melcher of Montana
Senator Daniel P. Moynihan of New York
Senator Don Nickles of Oklahoma
Senator Sam Nunn of Georgia
Senator Warren Rudman of New Hampshire
Senator Jim Sasser of Tennessee
Senator Paul Trible of Virginia
Senator Lowell P. Weicker of Connecticut
Senator Edward Zorinsky of Nebraska

In our opinion, you have listened well to the small businesses which still have late pay problems. The many businesspeople who testified at the Norfolk hearing, chaired by Senator Trible on December 2, 1985, identified a series of problems companies are encountering. We feel that you have addressed most of those problems in S. 2479. So I am here to support the bill. The Coalition feels that this bill represents an excellent approach to the problem and I feel confident that the provisions in S. 2479 will go a long way toward making the Prompt Payment Act work as the Congress intended.

We feel that the examples collected by this Committee in Norfolk could have been obtained in any major U.S. metropolitan area where there are Federal installations or government activities. Therefore, we feel that the answer you have developed to the problems raised in Norfolk will be applicable to small, medium and large firms all across the country. Most of the companies you heard from in Norfolk had contracts that involved them with sales around the country to agencies with procurement and payment centers in many other states. So I feel that this bill has been drafted to properly match the needs of businesses throughout the nation.

Mr. Chairman, while from time to time I mention in my testimony the importance of prompt pay to small businesses, I feel that what we are really talking about today is:

(1) Making the government a more efficient, reliable business partner.

(2) Enforcing on government a standard of fair play that is no more burdensome than the standard that exists in the private marketplace.

(3) Obtaining for the government a system that will attract the largest number of willing contractors, thus encouraging the greatest amount of competition that will result in the lowest possible prices to be paid by government.

When the Prompt Payment Act works correctly, it encourages small companies to compete, it gives them the assurance that they will not be ruined by an unfair interruption in cash flow, and it helps them feel that the favorable prices they offer the government will be honored by equally favorable payment practices.

The Prompt Payment Act of 1982 has been a success. Our three years of experience with this law show there has been significant improvement since 1982. As Director of the Coalition for Prompt Pay, I have received many comments from businesspeople indicating that interest is being paid on overdue bills and far more payments are made on time now than before 1982.

With the strong direction that implementation of this Act has received from the Office of Management and Budget, agencies are streamlining their bill-paying procedures. The resulting efficiency benefits the public not only by making the government more cost effective but also more accountable.

And, I'm pleased to report that passage of the Federal law requiring prompt payment of agency bills has provided an incentive for states to take similar action. With new laws passed in Wisconsin, Idaho and Mississippi this year, the total number of states with prompt pay laws is now forty-four (44), plus the District of Columbia.

Here are those which today have prompt pay laws:

Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Virginia
Washington
West Virginia
Wisconsin
Wyoming

I hope you feel a sense of pride for having launched a national movement because these states certainly got their inspiration from the Prompt Payment Act and all who supported it.

Loopholes Routinely Taken Advantage Of

However, there are still problems that exist with respect to implementation of the Federal Prompt Payment Act. Ambiguities in the law have resulted in loopholes that are routinely taken advantage of by some Federal agencies to circumvent the Act's intent. Furthermore, some key provisions in the Act are routinely ignored by Federal agencies and other requirements are avoided by bureaucratic entanglements.

While I feel the help we have received from OMB and the office of John Lordan, Deputy Associate Director for Financial Management, have been exemplary, I feel OMB will benefit from S. 2479 because the bill will strengthen OMB's hand in getting the job done. I can understand why OMB might express some concerns about the bill because after all they are speaking for the many agencies which were not in support of the Act in the first place. The agencies OMB speaks for are currently reluctant to fulfill the full intent of Congress and some do not even fulfill the intent of OMB's own regulation on this subject. But, I am equally confident that once this bill becomes law, OMB will embrace it as another valuable tool for obtaining government efficiency.

Because of ongoing problems with prompt pay, this Committee held a very successful hearing in Norfolk, Virginia, on December 2, 1985, chaired by Senator Trible to hear testimony from government contractors and key government procurement agencies. Senator Trible did an excellent job of chairing that hearing and has through S. 2479 provided a thoughtful and prompt response to the problems discussed at the Norfolk hearing. The new legislation addresses key elements of that testimony and remedies a number of existing problems.

I. Receiving Delays

Problem:

The 1982 Act states that the head of an agency is deemed to receive an invoice on the later of the dates that:

> (A) the designated payment office or finance center of the agency actually receives a proper invoice; or
>
> (B) the head of the agency accepts the applicable property or service.

The law and A-125 seem to show the intent in unmistakable terms.

A-125 states:

> "Agencies will ensure that receipt and acceptance are executed as promptly as possible. Receiving reports will be forwarded in time to be received by the designated payment office by the fifth business day after acceptance, unless other arrangements are made. Designated payment offices will stamp receiving reports and invoices with the date received in that office."

However, many agencies actually spend months certifying, accepting and receiving goods, services and invoices before forwarding them to the finance office for payment. Because the 30-day clock does not run at all during the months leading up to arrival of paperwork in the finance office, companies get very upset. This is true not only in instances where sophisticated defense contracts are involved but also in procurement of everyday off-the-shelf items such as common office supplies. Contrary to the intent of the law, these delays do little to enhance the government's image and, in fact, lend credence to the image of bureaucratic ineptitude. Furthermore, these long delays clearly violate the purpose of the Prompt Payment Act.

Solution (S. 2479):

The new amendments provide that an agency is deemed to receive an invoice on the later of:

> (A) the date on which the designated payment office or finance center actually receives a proper invoice or
>
> (B) on the 5th day after the date on which property is actually delivered or final performance of service is actually completed unless the contract specifies a longer period.

Coalition for Prompt Pay Comments:

By establishing in the statute a new 5-day standard for receipt of invoice, the bill sets forth a specific requirement that will be less subject to creative misinterpretation. We believe that a solid 5-day receipt and acceptance period would go a long way toward solving the problem. It will work with cooperation from OMB and the agencies and I have every confidence OMB will help on this because the provision in S. 2479 is so similar to OMB's own regulations as quoted above from A-125. The Coalition believes that 5-days is ample time in 99% of the government's payments. Up to 5-days should be the rule and not the exception.

This new 5-day standard begins the 30-day count: (1) on the date on which the designated payment office or finance center actually receives a proper invoice (2) within 5 days or (3) on the date set in the contract.

The Coalition's object in supporting this bill is the belief that it is possible for agencies to move receiving documents and acceptance documents to the payment office within 5 days. This would require, in our opinion, the government's receiving sites to use electronic approvals, to pursue rapid return of all paperwork, or to specify in the contract that they cannot meet the 5-day standard.

What we do not want to see result from S. 2479 is for agencies to publish and impose on small firms commonplace contractual terms which impose a mandatory receiving period in excess of the 5 days. For example, Mr. Chairman, I refer to Attachment 2 to my statement which is a form used by the Federal Supply Service of the General Services Administration. You will note that the agency has granted itself an additional full seven days for acceptance of supplies. These seven days are imposed on all companies regardless of the actual time the agencies take to process receiving papers. Added to the 45 interest-free days already allowed by law, this now gives the agency a period of 52 days to make payment and avoid the payment of interest. At the beginning of the Act's implementation, many agencies demonstrated the capability of paying in less than 30 days, but were criticized by OMB for doing so. OMB required them by regulation to make payments as close to the 30th day as possible. So, I am certain that agencies can perform the paying in under 30 days thus making room in the 30 days for some receiving days.

Therefore, if the contract adjusts the receiving period beyond 5 days, then the excess time should be taken out of the 30-day requirement and adjustments should be made accordingly so that the 30-day standard is still met. This suggestion, Mr. Chairman, would require an amendment to S. 2479.

Several states including Florida, Illinois, and Mississippi have adopted this approach by dividing the total payment period into separate periods for the two separate functions of receiving and payment.

Another approach would be to give agencies the flexibility to set their own standards for internal procedures such as receiving, acceptance, and certification provided that the payment is made within the 30 days.

> For example: "All proper invoices shall be received, accepted, certified for payment, and paid within 30 days after a properly submitted invoice is actually received in the designated payment office, provided that the property has been actually delivered or final performance of service actually completed."

This approach would allow each agency the discretion to determine how much of the 30-day period should be consumed by each function: receiving, acceptance, certification and issuance of the check. The Idaho law passed this spring follows this pattern.

OMB annually publishes a report in compliance with the Federal Prompt Payment Act. Since this report measures only the amount of time consumed by the finance office in processing payments, it is not a true reflection of actual late pay practices by the Federal agencies. There is no data provided on the period prior to commencement of the 30-day clock by the agency. In addition to the amendment in S. 2479 requiring that receiving be completed in 5 days, there should also be an amendment requiring OMB to provide data (in its annual report to Congress) on the period beginning immediately after the invoice is physically received so that agencies will have an additional incentive to improve their performance in receiving, acceptance and certification.

II. Abuses of Grace Period

Problem:

Some Federal agencies are routinely using the 15-day grace period in the Act to extend payment terms. In effect they have turned the 30-day goal set by Congress into a 45-day goal.

Solution (S. 2479):

The bill provides for a gradual phase-out of the grace period by reducing it to 7 days through October 1, 1988, then eliminating it altogether thereafter.

Coalition for Prompt Pay Comments:

To its credit the original Senate version of the Act contained no extra 15-day grace period. The 15 days were added in the House at the request of Defense employees who felt they could not achieve the 30-day standard. However, as the House Committee report stated: "The intent of the Committee that agencies pay their bills by the required payment date is in no way diminished by inclusion of provisions authorizing grace periods."

Despite that clear intent, contractors report to us that some Federal agencies routinely pay their bills within 45 rather than 30 days. Those industries which sell perishable goods, with a short shelf life, complain that while their commercial customers pay in under 20 days (in accordance with food industry terms), government agencies stretch payments up to the 45th day. Let's face it, the government is either paying higher prices for food or other customers are paying for the hidden carrying costs the company is burdened with. Either way the taxpayer is not served by the 15-day grace period. In fact, testimony at the Norfolk hearing indicated that 45 days is the average some companies are experiencing with certain Federal agencies. After three years of experience with the 30-day law, agencies should have implemented financial procedures that comply with the statutory requirements. Therefore, they should no longer need the 15 extra days.

The OMB annual prompt pay report shows that agencies are able to comply with the 30-day standard 99% of the time. So the government would experience little inconvenience by having to comply with the phased out grace period called for by S. 2479.

I might add that businesses find the 15-day "grace period" an abuse and a burden. In the business marketplace the 30-days following receipt of invoice is considered the "grace period". The extra 15 days represents a unique privilege of government and this undermines the perception of fair treatment for businesses. Once we phase out the extra 15-day bonus period, government will at last stand on equal footing with other customers and will thus comply with a common industry term.

In monitoring state prompt pay laws, we find that if grace periods are included, often their eventual elimination is also pre-determined and provided for statutorily. This is true in New York which will phase in a 30-day standard by 1988 and also in a law just passed this spring by Wisconsin. The State of Virginia amended its prompt pay law one year after initial passage to reduce its 15-day grace period to 7 days. I feel confident we will eliminate these extra days in Virginia very soon.

We believe that because the Federal government has had ample time to conform to the 30-day standard the extra 15-day bonus buffer is no longer necessary.

III. Interest Not Paid Automatically

Problem:

Despite the intent of the Act and OMB Circular A-125 which states clearly that an interest penalty will be paid automatically, some Federal agencies fail to provide for the payment of interest when a check is issued after the prescribed payment period.

Solution (S.2479):

S. 2479 clarifies that interest "shall be paid without regard to whether the business concern has requested payment of such penalty." Furthermore, the interest penalty is doubled when a vendor who is owed interest does not receive it with the payment and makes a written demand for interest due.

Coalition for Prompt Pay Comments:

The automatic payment of interest called for by this bill is fundamentally necessary for several reasons:

1) The vendor has no method of determining interest in advance since he or she does not know when the check will be issued by the agency.

2) Rebilling for interest is costly and burdensome to both the government (which has to process the new invoice) and to the company (which has to issue the invoice for an indefinite amount).

3) The interest rate is recalculated every six months and the government has much easier access to the current interest rate than does the vendor.

IV. Progress Payments, Retainage, and Partial Payments for Partial Deliveries

Problem:

Although the Act requires that interest penalties apply to contracts which provide for completed partial deliveries or completed partial executions of services, many agencies ignore this provision and refuse to pay interest on progress payments owed construction and other firms.

Solution (S. 2479):

The amendments clarify that interest is payable for late progress payments and retained amounts on construction contracts.

Coalition for Prompt Pay Comments:

This is a straightforward and effective solution to the problem. I know many of the construction industry firms which supported passage of the Act in 1981 and 1982 were astonished to discover they did not benefit from it since so many of their contracts involve progress payments. At a minimum, the Act should extend to the construction industry to ensure prompt pay of all money owed them. However, we would like to see language added to strengthen existing law requiring that interest penalties apply to late payments for all progress payments as long as the payment is for a completed stage of work from which the government enjoys beneficial occupancy or use. The Act's provision for partial payment for partial completed deliveries is often ignored by Federal agencies despite the statutory requirement but would be observed if there were a penalty added that would make the unfair delay undesireable.

V. Early Payment Discounts

Problem:

Some Federal agencies are taking discounts offered by contractors for early payment although actual payment is made after the expiration of the specified "discount period".

Solution (S. 2479):

S. 2479 states that the specified time for early discount payments shall be calculated from the date the invoice under the contract is received by the designated payment office or finance center until the date of payment.

Coalition for Prompt Pay Comments:

Abuses of the early payment discounts are particularly frustrating to contractors. While agencies take advantage of favorable financial terms, they should not do so when the discount deadline has been passed.

As mentioned by witnesses in Norfolk, sometimes agencies take a 2% discount, offered in return for a payment made in 20 days, but make the payment months after the 20-day discount period has expired.

Companies do not tolerate such blatant disregard for their payment terms from private customers. Why should the Federal government insist on being treated differently? Even worse, is the fact when some agencies take advantage of early payment discounts they do not even meet the 30-days required by law let alone the early payment deadline. Then, they refuse to pay interest penalties. The Coalition recommends that the penalty in S. 2479 be doubled when an agency unfairly takes the early payment discount. The double penalty would work in the same way as the doubling of the penalty for missed interest already in S. 2479.

VI. Annual Reports

Problem:

Existing law requires the submission of annual reports showing the number, amounts, and frequency of interest penalty payments but does not provide any measure of invoices paid after the required payment date for which no interest penalties were included.

Solution (S. 2479):

S. 2479 specifies that annual reports will now be required to include number, dollar value, and frequency of invoices paid late without payment of an interest penalty and the reasons no obligation to pay interest was incurred.

Coalition for Prompt Pay Comments:

Annual OMB prompt pay reports that include only the amount of interest paid under the Prompt Payment Act are hardly an accurate measure of agency performance when it is fact that some agencies are still not complying with the intent of the law. A small amount of interest payments could mean that the agency is successfully paying its bills on time or conversely it could mask the fact that interest penalties are simply not added to late payments. The new bill will give Congress, the Administration, and the public more accurate information and make the agencies more accountable.

Further, through an amendment to S. 2479, we believe Congress should receive, in the annual OMB report, data on the length of time consumed in receiving, acceptance and certification. Without such information, it will be difficult to monitor the new 5-day standard.

U.S. Postal Service

S. 2479 also quite correctly proposes new languge to state that the U.S. Postal Service is subject to the requirements of the Prompt Payment Act. We heartily agree with this amendment and hope that the Committee will make a determination as to whether any other quasi-independent agencies which receive and spend Federal funds are also in need of clarification as to their status for purposes of the Prompt Payment Act. Federal prompt payment requirements should be applied across the board to all agencies which procure goods and services. Both the Senate and House opposed agency-by-agency exemptions in the 1982 Act and we urge you to take this firm position again.

Additional Problems with the Prompt Payment Act

The Trible bill is a well-prepared and a responsive follow-up to the problems discussed by contractors at the December 2, 1985 hearing. We support the bill and pledge to do all we can to strengthen it and advance it through the Congress. Of course, there are other problems that have been brought to our attention through members of our Coalition and I'd like to discuss those as well as some recommended solutions.

Notification of Defective Invoices

The Act requires that contractors be given notice of an improper or defective invoice within 15 days of receipt of the invoice by the agency. The payment clock is then stopped until a proper invoice is submitted. This provision was put in the law specifically to prevent agencies from allowing unpaid invoices to languish for months before any action is taken. Companies complained to Congress that they were never informed when there was a problem on a contract or invoice . . . they billed repeatedly with no payment being made. This provision was designed to give companies early warning of late payment and to give companies an opportunity to correct errors and mistakes.

Unfortunately, most companies say Federal agencies are ignoring this 15-day provision. Rarely do vendors get notified about problems with their invoices. They have to make phone calls, and often write many letters as well, to find out the status of unpaid bills.

This is an unacceptable situation and represents bureaucracy at its worst. We recommend that the Committee provide a penalty for agencies that ignore this notification requirement of the law. Until there are teeth in this provision, agencies will ignore it. We are of course discussing here a feature related to improper invoices. These are invoices that do not meet the criteria for prompt payment. At a minimum OMB should, in its annual report, provide information to Congress on the compliance with this 15-day-notification provision. By asking for the information in its quarterly survey of agency payment practices, OMB will inspire some agencies to improve compliance.

Top Financial Officers

An often-repeated complaint of vendors is, "If only I could find the right person in the agency to correct this payment problem, I wouldn't have to waste so much time trying to solve it." Anyone who's had any experience at all with the Federal government knows how frustrating it can be to make numerous phone calls in an attempt to identify the one person who can answer your questions. There is a simple solution: OMB should publish semi-annual listings of the top financial officer in each Federal agency, giving name, address, and telephone number. This person would be the office of last resort for a businessperson who simply can't get a response to his or her request for payment of an invoice. This person should act as the payment ombudsperson of last resort--someone who does not buck the problem any further. Again, accountability provides an added measure of efficiency: one that is sorely needed here. This list would routinely be given to vendors by contract and procurement officials.

In addition, agencies should publish advisories to vendors on how to get paid. This information should be made available to every vendor and would go a long way in making sure that invoices are filled out correctly and that complicated procedures--which vary from agency to agency--are met. Contractors at the December 2nd hearing who stated that they are being paid on time noted that they devote considerable staff time and expense to administration of their Federal contracts. It isn't feasible for every firm to devote the same resources to tracking Federal payments and it shouldn't be necessary if information were more readily available to all companies as we are proposing here today.

The solution should be that OMB require every agency to publish an advisory on "How to Get Paid by This Agency". Some have already done it as we saw at the December 2, 1985 hearing. More should be encouraged to follow suit.

Medicare Payments

The Committee will be hearing from witnesses today who will address in detail the problem of obtaining prompt payment from fiscal intermediaries under the Medicare program. I think it is important to point out that there is no exemption for Medicare payments in the statute nor was there any intention that these payments should not be subject to the law. The loophole being culled out by the Health Care Finance Agency is the fact that HCFA doesn't really make the payments, but rather the work is done by an intermediary under contract. One possible solution to this problem is to amend the law by stating: "Fiscal intermediaries under the Medicare program or any other intermediary in a Federal program which disburses Federal funds to providers of products or services shall be considered subject to the requirements of the Federal Prompt Payment Act."

Based on meetings I have had with various business groups about prompt pay, I can report numerous complaints from medical equipment suppliers, health service providers, drug stores and others. In fact, while participating in a radio talk show in California I found that the majority of calls pertained to late Medicare reimbursement payments.

The Committee will be interested in the fact that the California state law specifically requires that . . . "In applying this section [926.15 Government Code (Prompt Pay)] to claims submitted to the state, or to its fiscal intermediary, by providers of services or equipment under the Medi-Cal Program . . . , payment for claims shall be due 30 days after a claim is received by the state or its fiscal intermediary, unless reasonable cause for nonpayment exists . . ." This California statute presents one method by which the Committee could respond to this problem.

Federal Grants

Similarly, the Committee will hear testimony requesting that Federal grant payments should be subject to the prompt payment law as well. The law currently permits grant recipients to adhere to the requirements of the Prompt Payment Act but does not make this provision mandatory.

At the very least, we would like to see the Committee request the General Accounting Office to study the incidence of late payments by grantees in disbursing Federal dollars and to report on the possible application of the prompt payment law to Federal funds spent by grantees. Such a study would be helpful in determining the feasiblity of stopping late pay by grantees. This GAO study should also look into complaints we've received from the United Way and from education associations that grantees sometimes get paid late by Federal granting agencies thus making on-time payments to companies difficult.

Subcontractor Payments

Another issue that was raised at the December 2nd hearing and will be discussed here today is the prompt payment of subcontractors after prime contractors have received payment from the Federal government. The Federal Prompt Payment Act of 1982 is silent on this issue but a number of state legislatures have confronted it head-on, most commonly by providing a passthrough mechanism whereby payments to subcontractors are required to be made within a specified number of days, such as seven or ten, after the prime contractor receives state payment. The same interest penalty would apply for late payments to subcontractors.

The states with prompt pay laws for subcontractors are: Florida, Hawaii, Louisiana, Massachusetts, Mississippi, Nevada, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas and Utah. These laws are working in these states and I believe a similar provision could work for Federal subcontractors.

The Coalition supports the proposals for a solution in this area. Because the Federal government is so insistent, as a matter of policy, that small subcontractors be engaged in most prime contracts, it is certainly consistent for Congress to look out for the prompt payments needed by these small subcontractors to stay in business.

We considered the possibility of amending the Miller Act (U.S.C. 40, Section 270a) to provide prompt payment to subcontractors. However, our research indicates that although the Miller Act is a vehicle for establishing requirements of contractual relationships, it represents a complicated and cumbersome remedy to the subcontractors' problems. We feel that a simple passthrough of prompt pay requirements to primes for their subs would be more timely, effective, and responsive to the complaints we've heard.

Additionally, some of the problems encountered by subcontractors could be handled administratively by granting authority to contract officers to assist subcontractors when they have payment problems with prime contractors. With such authority the Federal contract officer could simply function as a source of information and provide "neutral territory" for the two sides to meet. For example:

1. Give the contract officer authority to convene meetings between primes and subcontractors for the purpose of resolving payment disputes.

2. Give the contract officer authority to share with subcontractors information concerning the contract under which they are working including (a) information on a line-item basis concerning performance and payment, (b) bonding arrangements certified by the prime, (c) completion dates agreed to and reached on work involving the subcontractor, and (d) certifications, inspection and other approvals related to the work on which the subcontractor performed part or all of the service.

Of course, the government contract officer can't be in the business of divulging proprietary information at these meetings. This would be a violation of the Freedom of Information Act. But, for a sub trying to get paid there is some information he or she needs to argue the payment case: Did the job get certified or approved by the agency? Did the prime get paid? Or if not, what part of the job has to be redone by the prime?. . . Was it my part? . . . Who holds the bond on the prime's work?

At a minimum the Committee may be able to help subcontractors by getting them the information they need and by reducing the isolation they feel when they perform for government agencies but can only talk to their primes (if the prime is willing). We may also help by providing a person (Federal contract officer) and a place (government facility meeting room) for them to sit down face-to-face with the prime to discuss payment disputes.

Calculation of Interest Penalties

OMB Circular A-125 states: "Whenever a proper invoice . . . is paid after the due date plus 15 days . . . interest will be included with the payment at the interest rate applicable on the payment date."

To illustrate how this requirement may present problems, I ask the Committee's consent to submit for the record a copy of a letter from the Navy concerning a late payment (Attachment 3). As you will note, Captain Harshbarger (who testified at the December 2nd hearing) states that a check for $1,878.39 for interest on a seven month overdue payment was issued to a firm in Maryland in April, 1986. Interest was paid at the rate of 14.375% since "This was the rate in effect on the day the late payment was made." The rate of interest speaks for itself in indicating how late the payment was. For the Committee's records, the invoice was dated January 26, 1984 and payment excluding interest was made on August 10, 1984. To its credit, the Navy conceded its mistake and corrected the situation.

In this particular example, the contractor benefited from the OMB Circular quoted above. However, it appears that the degree of flexibility awarded Federal agencies by this regulation could result in willful delays of payments during periods when interest rates are expected to drop. For large payments, it could be in the agency's interest to withhold payment until the interest penalty changes to a lower rate.

For example, in June of 1985 it would have been to the government's advantage to delay payments to July 1 because interest penalties dropped from 12.125% to 10.375% and on January 1, 1986 they dropped again to 9.75%, once again tempting some unfair manipulation of government payments.

While the Navy follows the regulations and pays the interest rate that applied on the actual payment date, there is nevertheless an incentive for other agencies to monitor interest rates and schedule their payments in a manner that will result in less payment of interest.

Since the interest penalty was intended to compensate vendors for lost income and the effects of overdue payments on their cash flow, it seems fair to apply the interest rate in effect on the date the payment was due (versus the date the payment is made). This way, the penalty more accurately compensates the business owner for his or her cost of borrowing money to carry overdue government accounts. But whichever system is used (due date or payment date), agencies should be prohibited by Congress, through S. 2479, from delaying payments to take advantage of sharp interest rate breaks. All bills owed by government agencies should be paid as promptly as possible, regardless of interest rate variables.

Electronic Funds Transfer

At the hearing in Norfolk, the possibility of making the government's payments by electronic funds transfer was discussed as a means of speeding up payments. Utilization of this method of payment could solve a number of the problems associated with government payments to small firms.

The technology exists for thousands of payments to be issued automatically on a certain date and transmitted instantaneously into the bank accounts of vendors. Thousands of reams of paper and hundreds of thousands of paperwork hours could be saved. At the present time, payments of $25,000 and more can be made directly to a company's bank. However, the use of electronic funds transfer does not appear to be widespread within the Federal Government. In fact, it is difficult to obtain information at all about this method of payment and its application to government vendors. In this area, it is clear the government is lagging far behind corporate financial practices.

Senator Trible questioned witnesses from the Department of Navy and General Services Administration at the December 2nd hearing on prompt pay and I would like to repeat their comments on wire transfers for the Committee:

Senator Trible: "One suggestion that was made earlier, made in the testimony but actually not spoken, was that the Treasury Department should be permitted to pay via funds transfer directly to banks bills of less than $25,000. Apparently they can do that now on bills of $25,000 or more, but that's their first entry into the wire transfer business, I guess. But it was suggested that they should have the right to make smaller payments as well, which would, of course, be a direct benefit to the small businesses. Any thoughts about that?"

LeRoy P. Boucher, Director of Finance, General Services Administration: "I don't think that process has ever gotten off the ground with OMB yet."

Linda Vandenberg, Director, Financial Management Division, General Services Administration: "It has, for anybody who is on a manual payment. But we had suggested to Treasury that they develop some sort of high-speed interface so we wouldn't have to go from an automated system to a manual system. And they have never gotten it off the ground. It's still in the pilot stage. So we're not paying any--well, very few vendors, by wire transfer in manual payments."

Captain Leo Wardrup, U.S. Navy: "From the point of view of the Fleet Accounting and Disbursing Center, we would have no objection to wire transfers. We now pay all of our civilian employees on the east coast via electronic funds transfer. So what you're talking about is really nothing different from that. The only thing we have to do is have a certified bank account that these checks can go through. We submit our civilian pay tapes now directly to the Federal Reserve Bank in Richmond, and that eliminates the vicissitudes of the U.S. Mail."

Mr. Chairman, at this point I would like to request permission to insert an exchange of correspondence we had with the U.S. Department of Treasury on this subject (Attachment 4). In this exchange, I attempted to obtain specific information about the Federal government's use of electronic funds transfer and the government's plans for expansion of the service. As you will note, the reply I received was delayed many months and contained little information.

Small firms and the government would both benefit from an electronic funds transfer system which can make regular payments predictably on time and with a minimal margin for error. I would therefore urge the Committee through S. 2479, to request a study, of this idea by the U.S. Treasury Department and by any other appropriate Federal agency.

White House Conference on Small Business

As the Committee is well aware, a series of 57 state-level meetings have been held in 1985 and 1986 to prepare for the national White House Conference on Small Business in August, 1986.

At the conferences, small business owners had an opportunity to speak out on issues of importance to their firms. The delegates voted recommendations expressing their top priorities to be carried to the national conference and ultimately to the Administration and Congress.

Ten states plus the District of Columbia adopted resolutions calling for improvements in payment by Federal agencies. The ten are: Virginia, Minnesota, Connecticut, Massachusetts, North Carolina, Florida, New York, Louisiana, Kentucky, Idaho and the District of Columbia.

The resolutions called for more effective enforcement of the Prompt Payment Act, increases in interest penalties, and prompt payment for subcontractors, subjects which are being discussed here today.

Mr. Chairman, I respectfully request that an analysis of the White House Conference resolutions (published this month) be inserted as a part of my testimony (Attachment 5).

Examples from Contractors

In conclusion, Mr. Chairman, I would like to illustrate to the Committee typical examples of problems that are brought to our attention by Federal contractors. Here is a list of specific complaints that have come to us since the December 2, 1985 hearing.

Example 1

1. A contractor sent an example of documents concerning a sale of $2,300 to the U.S. Navy in which the dates of receipt were crossed out and changed by the Navy and no interest was paid. Here is a copy of that file, Mr. Chairman, and you will note that the original date of material received was 2-10-86 according to the contractor yet the Navy crossed out that date and inserted 18 March 1986. The same was done for the acceptance dates. The invoice was dated 2-18-86 and payment was received 4-21-86.

Example 2

2. Also included with this statement is a copy of an invoice from a Midwestern company dated 1-14-86 and the Veterans Administration's payment of $699.82 on 4-10-86. No interest was paid and we can only speculate on the reasons but the Trible amendments will make agencies more accountable for the time lapse between the date of invoice and date of payment. In this particular instance, the company owner told the Coalition that she did not pursue payment of interest because she felt it would consume a lot of time she couldn't spare.

Example 3

3. A company in Maryland contacted us for help in obtaining payment of $29,399.07 from the U.S. Navy. The original invoice, dated 1-26-84, was ". . . lost before processing was completed . . ." according to the Navy (see attached letter dated 30 July 1984). The contractor issued a new invoice dated 7-18-84 and payment was made on August 10, 1984. Subsequent invoices for interest were ignored by the Navy until we requested Captain Harshbarger's intervention and, to its credit, the Navy then conceded its error and paid $1,878.39 in interest on April 23, 1986.

Conclusion

Mr. Chairman, we support S. 2479. You have done a good job of listening to the small firms which testified December 2nd in Norfolk. S. 2479 goes directly to the heart of most of the complaints aired in Norfolk. In this statement, the Coalition has provided you advice on other changes which should be made to improve the Act, its implementation and the annual report to Congress. We are very pleased with the leadership you and all the cosponsors are providing to resolve this problem. The word is clearly out in the small business community that you are working hard for fair treatment of small firms, improved government efficiency, and greater competition for government procurements. Thank you for holding this hearing and listening to the views of the Coalition for Prompt Pay.

ATTACHMENT 1

COALITION
FOR
PROMPT PAY

MEMBERS OF THE COALITION FOR PROMPT PAY

International Communications Industries Association (ICIA)
National Moving & Storage Association (NMSA)
Association for Information & Image Management (AIIM)
Door & Hardware Institute (DHI)
American Subcontractors Association (ASA)
Association of General Contractors, Rhode Island Chapter (AGC)
National Association of Manufacturers (NAM)
Small Business United (SBU)
Coalition for Common Sense in Government Procurement
American Meat Institute (AMI)
American Consulting Engineers Council (ACEC)
Associated Specialty Contractors (ASC)
National Electrical Contractors Association (NECA)
Painting & Decorating Contractors of America (PDCA)
Mechanical Contractors Association of America (MCAA)
Mason Contractors Association of America (MCAA)
Sheet Metal & Air Conditioning Contractors National Association (SMACNA)
National Roofing Contractors Association (NRCA)
National Association of Plumbing-Heating-Cooling Contractors (NAPHCC)
National Association of Retail Druggists (NARD)
National Insulation Contractors Association (NICA)
National Association of Wholesalers (NAW)
National Association of Credit Management (NACM)
International Sanitary Supply Association (ISSA)
Association of the Wall & Ceiling Industries--International (AWCI)
American Association of Nurserymen
Associated Building Contractors

3150 SPRING STREET • FAIRFAX, VIRGINIA 22031 • (703)273-7200

I-FSS-800-A (4/84)

PRODUCTION POINT: The offeror shall insert in the spaces below (or by an attachment to the offer if additional space is needed) the names of the manufacturers of the items offered and the address, etc., of the facilities at which the items will be manufactured or produced.

Item No(s)	Name of Manufacturer	Production Point-Name, Address (including county) and Tel No.	DUNS No.

I-FSS-820-A (4/84)

ORDERING ADDRESS: Offerors are requested to indicate below the address(es) to which orders should be forwarded:

I-FSS-916-A (4/84)

PAYMENT DUE DATE:

(a) Payments under this contract will be due on t[illegible] 30th c[illegible] day after the later of:

(1) The date of actual receipt of a proper [illegible] office designated to receive the invoice, or

(2) The date the supplies are accepted by the G[illegible]

AGENCY TAKES AUTOMATIC 7 DAYS TO RECEIVE

(b) For the purpose of determining the due date for payment and for no other purpose, acceptance will be deemed to occur on the 7th calendar day after the date of delivery of the supplies in accordance with the terms of the contract, unless otherwise specified in the individual purchase order.

(c) If the supplies are rejected for failure to conform to the technical requirements of the contract, or for damage in transit or otherwise, the provisions in paragraph (b) of this clause will apply to the new delivery of replacement supplies.

(d) The date of the check issued in payment or the date of payment by wire transfer through the Treasury Financial Communications System shall be considered to be the date payment is made.

(e) The designated Government payment office for this contract/purchase order is: ________________.

(f) The vendor's remittance or check mailing address, if different from the business address is: ________________

FEDERAL PROMPT PAYMENT ACT

ATTACHMENT 3

DEPARTMENT OF THE NAVY
OFFICE OF THE COMPTROLLER
WASHINGTON, D.C. 20350 1100

IN REPLY REFER TO
7200
NCF-214
28 APR 1986

MAY 02 1986

Mr. Kenton Pattie
Director, Coalition for State Prompt Pay
3150 Spring Street
Fairfax, VA 22031

Dear Mr. Pattie:

Reference is made to your letter of April 16, 1986 requesting assistance in resolving an interest payment problem between Substation Test Company and the Department of the Navy.

I am pleased to inform you that check number 03,233,400 was issued to Ms. Green's company on April 23, 1986 in the amount of $1,878.39. The above payment was based on an interest rate of 14.375%. This rate was established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S. Code 611). This was the rate in effect on the day the late payment was made.

I sincerely regret any inconvenience experienced by the vendor in this matter. If I may be of any further assistance please do not hesitate to contact me.

Sincerely,

E. R. HARSHBARGER
CAPT, SC, USN
Deputy Assistant Comptroller
Financial Management Systems

ATTACHMENT 1

DEPARTMENT OF THE TREASURY
FISCAL SERVICE
FINANCIAL MANAGEMENT SERVICE
WASHINGTON, D.C. 20226

March 10, 1986

Mr. Kenton Pattie, Director
Coalition For State
Prompt Pay
3150 Springs Street
Fairfax, Virginia 22031

Dear Mr. Pattie:

This is in response to your letter to Russ Hennig requesting information on Treasury's intention with respect to Federal Government payments to vendors by wire transfer. My answers are numbered to correlate with your questions, a copy of your letter is enclosed for ease of reference.

1. Yes. However, due to the high volume of such payments generated by the General Services Administration, the Veterans Administration and the Department of Agriculture's National Finance Center, these agencies have been granted a waiver to Treasury's mandate that vendor payments over $25,000 be made by TFCS (our link to Fedwire).

2. All agencies for which Treasury disburses, except for the three cited above, use TFCS. The information requested in the second question under #2 is not maintained.

3. A few exceptions to the $25,000 threshhold have been granted. Due to the burden vendor payments create for our TFCS mechanism, we are not interested in lowering the threshhold. Instead we are seeking alternative methods via the ACH system to make the smaller vendor payments.

4. This information is not maintained.

5. As noted above, we do not propose to lower the threshhold for wire transfers. Instead we are testing several ACH formats to determine how to expand the use of EFT for vendor payments as well as reduce the strain vendor payments create on our TFCS mechanism.

DIRECT DEPOSIT
→ELIMINATES LOST, STOLEN OR FORGED CHECKS

6. These questions are not easily answered. As I mentioned to your secretary March 6, I would like to personally meet with you to explain the full range of actions Treasury is taking to apply electronic funds transfer to vendor payments.

Commitments already made will take me out of the office March 11-14 and March 24-27. If we can get together, even if only by telephone, at any other time in March, please give me a

Sincerely,

Charles F. Schwan III, Director
Program Management Division

Enclosure

COALITION
FOR
STATE
PROMPT PAY

October 11, 1985

Mr. Russell Morris
Assistant Commissioner, Federal Finance
Department of the Treasury
Financial Management Service
Room 600E
Treasury Annex #1
Washington, D.C. 20226

Dear Russ:

A member of our staff recently attended Treasury's special briefing on nationwide issuance of the new government paper check. We were grateful to receive first-hand information on the subject.

We are also interested at this time in obtaining an update of the status of government payments to vendors by wire transfer. It would be most helpful if you or your staff could respond to the following inquiries:

1. Can electronic fund transfer payments be made by the government to all vendors by all Federal agencies if the amount of payment exceeds $25,000?

2. Currently which agencies of the U.S. Government actually use the electronic transfer payment method? Can you provide us agency-by-agency dates showing dollar volume and number of uses versus agency's total payments?

3. Are any exceptions made to the $25,000 threshold and under what circumstances? How can a wire transfer be initiated for an amount under $25,000?

4. Treasury officials state that approximately 60 percent of government payments to vendors in excess of $25,000 are made by wire transfer. Would you give us a full breakdown of this figure, indicating for example, the number of business firms which utilize this payment method?

5. Is the $25,000 threshold scheduled to be lowered in the near future? Who is making this decision? What are the opportunities for public comment on the need for lowering the threshold?

3150 SPRING STREET • FAIRFAX, VIRGINIA 22031 • (703)273-7200

6. What currently is the procedure a business should follow in order to receive government payments by electronic funds transfer?

7. Does the government use more than one system to transfer funds electronically? At the paper check briefing, a chart was present describing the process as one that is primarily used for direct deposit of recurring payments like Social Security benefits but also one which makes it possible to pay multiple invoices from a company supplying different services. While this information leads one to believe that a single system is used by the government, discussions with Treasury staff indicate that separate systems are used for recurring benefit payments and payments to vendors for goods or services. Please help by clarifying this.

Russ, I hope you will be able to assist us in providing our members with this information. Some of the problems involving late payment by government might be eliminated by the increased use of wire transfer. So we'd like to make sure your system is well known and widely understood by vendors. Thank you for your help Russ.

Warmest personal regards.

Sincerely,

Kenton

Kenton Pattie
Director

KP/md

ATTACHMENT 5

BACKGROUND INFORMATION
ON STATE RECOMMENDATIONS
OF THE 1986 WHITE HOUSE CONFERENCE
ON SMALL BUSINESS

June 1936

INTRODUCTION FOR DELEGATES

Congratulations on fifty-seven successful state meetings of the White House Conference on Small Business. You have identified more than 2,000 priority recommendations for change in Federal policy. This notebook includes background materials on the most frequent recommendations. We are providing it so that you are aware of the issues of broadest concern to delegates from other states and so that a central source of background information is available to you. If new issues or changes in the status of issues occur between now and August, we will send you updated pages.

These papers were drafted by 60 private sector volunteers from small business organizations and other groups who set forth the issues in related groups and wrote the explanatory material. Coordination and editing was completed by the Office of Advocacy issues staff in conjunction with staff of the Conference. All of these small business experts are identified in the following pages.

The discussion is divided into eleven issue areas, including liability insurance, a topic not included in the original Issue Briefs and Facts. A table of contents and a glossary both will help you locate a particular issue discussion.

For each key recommendation we have included both pro and con arguments reflecting the disparate views on these issues. Of course, the ultimate selection of the most important recommendations is yours when you meet in Washington in August.

We are looking forward to an exciting and productive conference. We hope that these background materials help you to debate and refine the issues and to make recommendations which will lead to significant changes in Federal small business policy.

Catherine S. Hiler
Catherine S. Hiler
Acting Executive Director
for White House Conference
on Small Business

Frank S Swain
Frank S. Swain
Chief Counsel for Advocacy
U.S. Small Business
Administration

June 1986

PROMPT PAYMENT TO PUBLIC CONTRACTORS

Background and History: The Prompt Payment Act of 1982 (PL 97-177) requires all Federal agencies to pay vendors interest penalties on payments made beyond a 30-day deadline, plus an additional 15-day grace period. The Act also requires partial payments on partial deliveries, and it requires that vendors and service firms be notified when payments will not be made on time, for any reason. However, many small businesses are concerned that the Prompt Payment Act may not be working as intended.

Since 1982, many states have enacted similar laws. By early 1986, 41 states plus the District of Columbia had passed prompt-pay laws requiring interest penalties on overdue bills. Some state laws apply to subcontracts, something the Federal law does not. Some state laws also apply to local governments, as well as to state agencies and state universities.

Frequent State Conference Recommendations:

- Enforce the Prompt Payment Act more effectively.
- Increase the Prompt Payment Act interest rates.

Key Recommendation 1: Enforce the Prompt Payment Act more effectively.

Pro: The Act is clear in its intent--all bills owed by Federal agencies should be paid within 30 days of the receipt of invoice or the completion of the work. However, agencies have worked out loopholes that ought to be closed. Sometimes agencies spend months processing paperwork before submitting approval to the designated payment office, the point from which the 30 days are counted. Agencies often "lose" invoices and cause vendors to resubmit, resulting in a new start on the 30-day time period. Agencies routinely take the 15-day extra grace period allowed by law, although the extension is supposed to be used only in unusual situations.

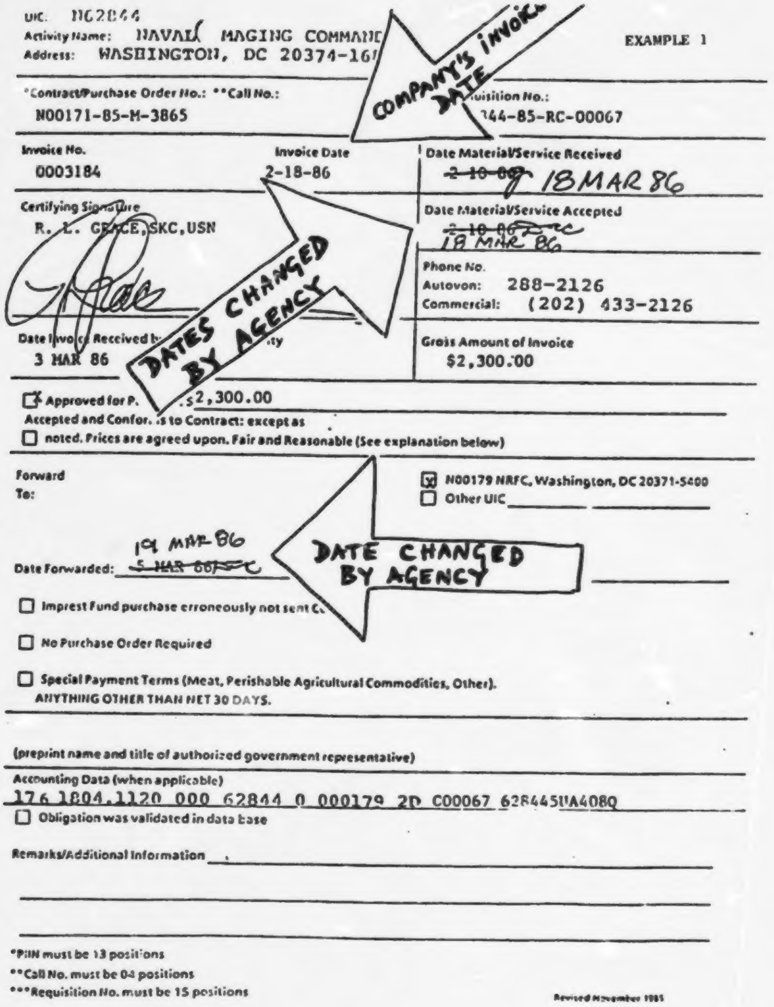
Enforcement is up to the same agencies which are paying late. Congress should close these loopholes and increase penalties paid by agencies when they engage in late payment practices.

Con: Federal agencies are not intentionally violating the Prompt Payment Act and are making efforts to comply. Compliance is made particularly difficult by paperwork requirements, such as receiving reports, acceptance papers, certification documents, and payment approvals necessary for the proper functioning of the procurement system. Agencies are trying to speed and streamline the payment processing system. Delay in payment is as often the result of contractor error as it is government inefficiency. The Prompt Payment Act is basically self-enforcing, and major changes are unnecessary.

Key Recommendation 2: Increase the Prompt Payment Act interest rates.

Pro: The annual interest rate for the period of January through June 1986 is 9.75 percent, about three points less than most small firms are paying to borrow money. The rate is not high enough to "penalize" the Government because it is too close to the Government's actual cost of money. The rate should impose a greater penalty, which should increase more rapidly the longer the bill remains unpaid.

Con: The Prompt Payment Act does not intend to penalize the Government, but to make the contractor whole in situations where payment is unavoidably delayed. This is why the rate is tied to the same rate the Government must pay when it is found to owe a vendor under the Contract Disputes Act. Using a prompt payment interest rate higher than normal U.S. Treasury rates would be unfair to the Government.



UIC: N62844
Activity Name: NAVAL(MAGING COMMAND
Address: WASHINGTON, DC 20374-16

EXAMPLE 1

COMPANY'S INVOICE DATE

*Contract/Purchase Order No.: **Call No.:
N00171-85-M-3865

uisition No.:
44-85-RC-00067

Invoice No.
0003184

Invoice Date
2-18-86

Date Material/Service Received
~~2-10-86~~ 18 MAR 86

Certifying Signature
R. L. GRACE, SKC, USN

Date Material/Service Accepted
~~2-10-86~~ RLG
18 MAR 86

DATES CHANGED BY AGENCY

Phone No.
Autovon: 288-2126
Commercial: (202) 433-2126

Date Invoice Received b ty
3 MAR 86

Gross Amount of Invoice
$2,300.00

☑ Approved for P. $2,300.00

Accepted and Confor s to Contract: except as
☐ noted. Prices are agreed upon. Fair and Reasonable (See explanation below)

Forward To:
☒ N00179 NRFC, Washington, DC 20371-5400
☐ Other UIC ______

Date Forwarded: ~~5 MAR 86~~ RLG 19 MAR 86

DATE CHANGED BY AGENCY

☐ Imprest Fund purchase erroneously not sent C

☐ No Purchase Order Required

☐ Special Payment Terms (Meat, Perishable Agricultural Commodities, Other).
ANYTHING OTHER THAN NET 30 DAYS.

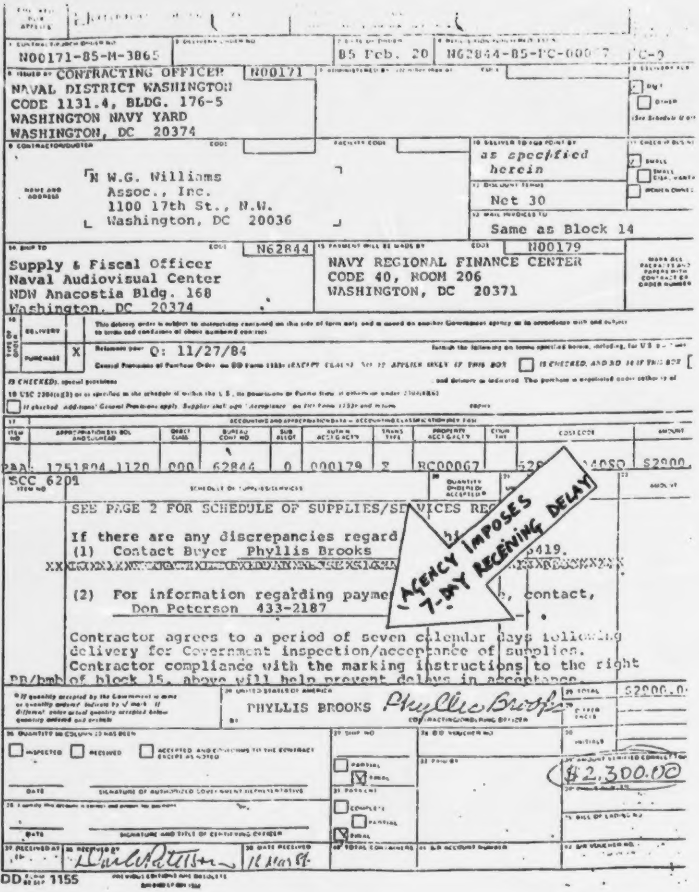
(preprint name and title of authorized government representative)

Accounting Data (when applicable)
176 1804.1120 000 62844 0 000179 2D C00067 628445UA408Q
☐ Obligation was validated in data base

Remarks/Additional Information ______

*PIIN must be 13 positions
**Call No. must be 04 positions
***Requisition No. must be 15 positions

Revised November 1985



N00171-85-M-3865

85 Feb. 20

N62844-85-PC-000?7

CONTRACTING OFFICER N00171
NAVAL DISTRICT WASHINGTON
CODE 1131.4, BLDG. 176-5
WASHINGTON NAVY YARD
WASHINGTON, DC 20374

☑ DEST
☐ OTHER

N W.G. Williams
Assoc., Inc.
1100 17th St., N.W.
Washington, DC 20036

as specified herein

☑ SMALL

Net 30

Same as Block 14

N62844
Supply & Fiscal Officer
Naval Audiovisual Center
NDW Anacostia Bldg. 168
Washington, DC 20374

N00179
NAVY REGIONAL FINANCE CENTER
CODE 40, ROOM 206
WASHINGTON, DC 20371

PURCHASE X Q: 11/27/84

PAA	1751804.1120	000	62844	0	000179	2	RC00067		528 … 40SO	$2900.

SCC 6201

SEE PAGE 2 FOR SCHEDULE OF SUPPLIES/SERVICES RE…

If there are any discrepancies regard… thi…
(1) Contact Buyer Phyllis Brooks …5419.
XX~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

(2) For information regarding payme… …e, contact,
Don Peterson 433-2187

AGENCY IMPOSES 7-DAY RECEIVING DELAY

Contractor agrees to a period of seven calendar days following delivery for Government inspection/acceptance of supplies. Contractor compliance with the marking instructions to the right of block 15, above will help prevent delays in acceptance.

PB/bmb

PHYLLIS BROOKS Phyllis Brooks

$2900.0

☐ ☐ ☐

☐ PARTIAL
☒ FINAL

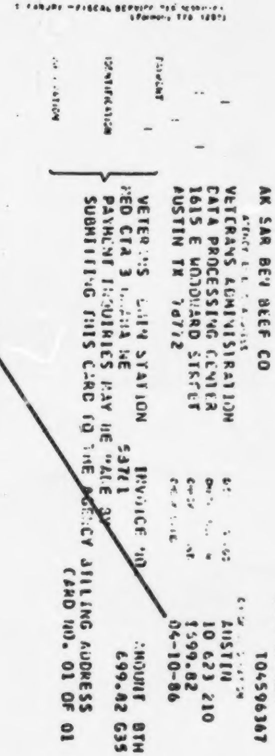
($2,300.00)

☐ COMPLETE
☐ PARTIAL
☒ FINAL

11 Mar 85

DD 1155

EXAMPLE 2



AK SAR BEN BEEF CO
VETERANS ADMINISTRATION
DATA PROCESSING CENTER
1615 E WOODWARD STREET
AUSTIN TX 78772

T04596367
AUSTIN
10 623 210
$599.82
04-10-86

PAYMENT IDENTIFICATION

VETERANS ADMIN STATION
MED CTR 3 OMAHA NE

INVOICE NO.
58761

AMOUNT BTH
699.82 G35

PAYMENT INQUIRIES MAY BE MADE BY SUBMITTING THIS CARD TO THE AGENCY BILLING ADDRESS

CARD NO. 01 OF 01

INVOICE WAS 1/14/86
BUT PAYMENT WAS 4/10/86.
YET, DESPITE LATE
PAYMENT, NO
INTEREST WAS PAID
AUTOMATICALLY.

-00005

DATE 1-16-86

SOLD TO
CALM VA 30/536
P. O. BOX 2973
AUSTIN, TEXAS 78769

ORIGINAL—OFFICE COPY

A.M. DELIVERY	P.M. DELIVERY	CUST ORDER NO	SALESMAN	SHIPPING DATE	SHIP VIA	[illegible]	LOCATION
	BY 3:00	623A52027	18	1-17-86	[illegible]	[illegible]	[illegible]

PRODUCT CODE	QUANTITY	DESCRIPTION	WEIGHT	PRICE	AMOUNT
	15 BX	4/1 CUBE STEAKS	252.1	2.3[illegible]	[illegible]
22741	12 BX	4/1 GROUND BEEF PATTIES	216.2	1.2[illegible]	273.28
	60#	1 OZ. (F) SKINLESS LINK SAUSAGE	60.0	1.21	72.60
		TOTAL			[illegible]

DELIVER TO:

CHIEF, SUPPLY SERVICE
VA MEDICAL CENTER
4101 WOOLWORTH AVENUE
OMAHA, NEBRASKA 68105

CASES	PACKAGES	PIECES	CHARGE	TERMS	CASH	COD CUR	COD CK	RECEIVED BY
33			X	WEEKLY				

I hereby certify that the following described product, which is offered for shipment [illegible] has been U.S. inspected and passed by the U.S. Department of Agriculture, is so marked, and at this date is not adulterated or misbranded.
U.S. GOVERNMENT INSPECTED ESTABLISHMENT [illegible]

BILLED AND SHIPPED MEAT IN
JAN. SHOULD HAVE BEEN PAID FOR
BY 1ST WEEK OF FEB. (LAW
SAYS 7 DAYS FOR MEATS). WHY
NO INTEREST PAID?

DEPARTMENT OF THE NAVY
OFFICE OF THE COMPTROLLER
WASHINGTON, D C 20350-1100

FEDERAL PROMPT PAYMENT ACT

EXAMPLE 3

MAY 02 1986

IN REPLY REFER TO
7200
NCF-214
28 APR 1986

Mr. Kenton Pattie
Director, Coalition for State Prompt Pay
3150 Spring Street
Fairfax, VA 22031

Dear Mr. Pattie:

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I sincerely regret any inconvenience experienced by the vendor in this matter. If I may be of any further assistance please do not hesitate to contact me.

Sincerely,

E. D. HARSHBARGER
CAPT, SC, USN
Deputy Assistant Comptroller
Financial Management Systems

NAVY CORRECTS MISTAKE

COALITION
FOR
PROMPT PAY

The attached tables were prepared by the Coalition for Prompt Pay using the Office of Management and Budget's annual reports as the source for figures.

The first table shows the dollar amount of interest penalties, the number of interest penalties paid, and the percent frequency of payments which incurred interest penalties for each agency for the fiscal years 1983, 1984, and 1985.

The following three tables rank in descending order the agencies' performance with respect to each of those categories: dollar amount of interest penalties, number of interest penalties, and percent frequency.

For comparison purposes, aggregate figures for the Department of Defense are used throughout the charts although in the FY 85 report, separate figures are given for the Army, Navy, Air Force, DLA, and other defense agencies.

Additionally, the 1985 report includes an entry for "Other Agencies" which was also excluded from this comparison.

June 19, 1986

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PROMPT PAYMENT PERFORMANCE

DEPARTMENT	INTEREST PENALTIES			PENALTIES			% FREQUENCY		
	1983	1984	1985	1983	1984	1985	1983	1984	1985
Agriculture	$111,171.00	$520,406.00	$514,376.00	10,009	20,430	21,661	0.73	1.26	1.57
Commerce	$4,736.00	$58,684.00	$209,957.00	502	841	9,415	0.24	0.34	2.96
Defense	$2,051,121.00	$3,990,000.00	$3,607,598.00	120,782	173,926	127,399	0.88	1.08	0.81
Education	$1,349.00	$6,836.00	$17,255.00	123	324	625	1.09	3.7	3.7
Energy	$63,723.00	$98,400.00	$95,413.00	2,354	3,166	2,690	2.08	2.6	2.4
EPA	$29.00	$121.00	$187.00	6	13	20	0	0	0
GSA	$56,927.00	$214,572.00	$623,637.00	2,374	9,409	23,320	0.1	0.4	1.04
HHS	$89,220.00	$170,799.00	$222,184.00	6,276	9,805	10,472	0.46	0.65	0.66
HUD	$420.00	$34,425.00	$13,550.00	39	2,342	720	0.06	1.94	0.7
Interior	$119,396.00	$277,359.00	$349,473.00	3,082	10,524	17,696	0.37	0.97	1.46
Justice	$5,2672.00	$124,919.00	$118,792.00	3,706	2,987	1,814	0.59	0.4	0.2
Labor	$5,641.00	$35,797.00	$20,284.00	455	470	1,203	0.93	0	0.9
NASA	$4,389.00	$28,900.00	$34,700.00	233	769	1,066	0.16	0	0.4
NSF	$37.00	$0.00	$0.00	1	0	0	0.02	0	0
OPM	$338.00	$316.00	$168.00	30	14	13	0.09	0.03	0.02
SBA	$,4786.00	$3,857.00	$13,536.00	203	89	130	0.54	0.31	0.35
State	$4,180.00	$9,338.00	$27,811.00	160	184	10	0.06	0.08	0
DOT	$178,923.00	$383,418.00	$540,079.00	15,761	18,887	21,526	1.75	1.7	1.85
Treasury	$1,6111.00	$65,117.00	$161,949.00	1,073	2,563	4,400	0.18	0.37	0.6
VA	$119,861.00	$366,352.00	$381,839.00	12,245	28,318	29,067	0.25	0.7	0.83
SUMMARY	$2,885,032.00	$6,389,616.00	$6,952,788.00	179,414	285,061	273,247	0.65	0.93	0.95

Source: Office of Management and Budget

Prepared by the Coalition for Prompt Pay

PROMPT PAYMENT PERFORMANCE

RANK BY DOLLAR AMOUNT OF PENALTIES PAID

1983		1984		1985	
DEPARTMENT	PENALTIES	DEPARTMENT	PENALTIES	DEPARTMENT	PENALTIES
Defense	$2,051,121.00	Defense	$3,990,000.00	Defense	$3,607,598.00
DOT	$178,923.00	Agriculture	$520,406.00	GSA	$623,637.00
VA	$119,861.00	DOT	$383,418.00	DOT	$540,079.00
Interior	$119,396.00	VA	$366,352.00	Agriculture	$514,376.00
Agriculture	$111,171.00	Interior	$277,359.00	VA	$381,839.00
HHS	$89,220.00	GSA	$214,572.00	Interior	$349,473.00
Energy	$63,723.00	HHS	$170,799.00	HHS	$222,184.00
GSA	$56,927.00	Justice	$124,919.00	Commerce	$209,957.00
Justice	$52,672.00	Energy	$98,400.00	Treasury	$161,949.00
Treasury	$16,111.00	Treasury	$65,117.00	Justice	$118,792.00
Labor	$5,641.00	Commerce	$58,684.00	Energy	$95,413.00
SBA	$4,786.00	Labor	$35,797.00	NASA	$34,700.00
Commerce	$4,736.00	HUD	$34,425.00	State	$27,811.00
NASA	$4,389.00	NASA	$28,900.00	Labor	$20,284.00
State	$4,180.00	State	$9,338.00	Education	$17,255.00
Education	$1,349.00	Education	$6,836.00	HUD	$13,550.00
HUD	$422.00	SBA	$3,857.00	SBA	$13,536.00
OPM	$338.00	OPM	$316.00	EPA	$187.00
NSF	$37.00	EPA	$12.00	OPM	$168.00
EPA	$29.00	NSF	$0.00	NSF	$0.00

Source: Office of Management and Budget

Prepared by the Coalition for Prompt Pay

PROMPT PAYMENT PERFORMANCE

RANK BY NUMBER OF PENALTIES

1983		1984		1985	
DEPARTMENT	PENALTIES	DEPARTMENT	PENALTIES	DEPARTMENT	PENALTIES
Defense	12,0782	Defense	173,926	Defense	127,399
DOT	1,5761	VA	28,318	VA	29,067
VA	12,245	Agriculture	20,430	GSA	23,320
Agriculture	10,009	DOT	18,887	Agriculture	21,661
HHS	6,276	Interior	10,524	DOT	21,526
Justice	3,706	HHS	9,805	Interior	17,696
Interior	3,082	GSA	9,409	HHS	10,472
GSA	2,374	Energy	3,166	Commerce	9,415
Energy	2,354	Justice	2,987	Treasury	4,400
Treasury	1,073	Treasury	2,563	Energy	2,690
Commerce	502	HUD	2,342	Justice	1,814
Labor	455	Commerce	841	Labor	1,203
NASA	233	NASA	789	NASA	1,066
SBA	203	Labor	470	HUD	720
State	160	Education	324	Education	625
Education	123	State	184	SBA	130
HUD	39	SBA	89	EPA	20
OPM	30	OPM	14	OPM	13
EPA	6	EPA	13	State	10
NSF	1	NSF	0	NSF	0

Source: Office of Management and Budget

Prepared by the Coalition for Prompt Payment

Senator **Trible**. Mr. Pattie, I thank you for your testimony, and I want to applaud your leadership and that of the Coalition for Prompt Pay for underscoring the continuing problems, and yet recognizing that substantial progress has been made under the terms of the Prompt Payment Act.

Really what we hope to do today is some fine tuning——

Mr. **Pattie**. Right.

Senator **Trible** [continuing]. To meet some of the reoccurring and continuing problems, but recognizing that it was the work of you, Mr. Pattie, Mr. Brewster, and some of my colleagues in the Congress that we have come a long way.

As you have underscored in your testimony, our objective really is to simply establish a standard of fair play, and ensure that the Federal Government is a more reliable business partner, and to diminish some of the burden that falls on the business community large and small, but a burden that is especially difficult for the small business person to bear.

I recognize the presence of my distinguished colleague from Oklahoma, Mr. Nickles. Would you care to say something at this point?

STATEMENT OF HON. DON NICKLES, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator **Nickles**. I may comment, Mr. Chairman, that I compliment you for the hearing and also for the legislation which you have been involved with, and hopefully we will have some success in the not-too-distant future. I know that I have had several constituents that have had some problems, timeliness problems with their payments, and so forth. So I would hope that one, just by the hearing itself, and by the interest that is shown, and the legislation that has been presented, that that will help expedite some positive administrative remedies maybe even outside the legislation and, if necessary, legislative effort as well.

I compliment you for it, and I look forward to working with you, as well.

Senator **Trible**. I thank you.

Mr. Brewster, you are most welcome. I acknowledge your good work through the years in shaping the Prompt Payment Act, and I welcome you today to give us your advice and counsel on how that act might be perfected.

I would say for your sake and for those witnesses that would follow, that your full statement will of course be made a part of the record, and you are invited to summarize those extensive statements, if you wish. Or, if not, I am here to listen to every word.

STATEMENT OF CHRISTOPHER R. BREWSTER, ESQ., KAYE, SCHOLER, FIERMAN, HAYS & HANDLER, WASHINGTON, DC

Mr. **Brewster**. Senator Trible and Senator Nickles, I very much appreciate the opportunity to be here today to testify concerning the Prompt Payment Act Amendments of 1986. As you may know, I served as chief counsel of what was then called the Subcommittee on Federal Expenditures, Research, and Rules during consideration of the legislation that became the Prompt Payment Act, and in that capacity I served as one of the principal staff draftsmen of the Senate bill. I would like to take a moment, if I can, to review some of the history of that legislative effort.

The Subcommittee on Federal Expenditures was charged with responsibility for oversight of the Federal procurement system. When Senator Danforth assumed the chairmanship of the subcommittee in 1981, he directed the staff to review the procurement system to identify opportunities for reform.

To that end, we met with a number of Federal contractors from small mom-and-pop companies on through to international corporations. In meeting after meeting, but especially in meetings with small businesses, we repeatedly heard complaints about problems encountered in getting the Government to pay its bills on time.

Moreover, we were told that the Federal Government in some cases had the gall to take quick-pay discounts after having made these contractors wait weeks and even months for payment. Now the anecdotal evidence that we received from our meetings with the contractors was bolstered by a study that had been done by the GAO in 1978, in which the General Accounting Office found that some 30 percent of the invoices they reviewed were paid late by the Government for no good reason whatsoever.

All in all, the GAO estimated then that some $9.8 billion in Federal contracts were paid late just during the 6-month period that was covered by that study.

We sought explanations from Government managers and instead of getting explanations, what we got were some pretty lame excuses. In fact, we had one rather extraordinary meeting in which it was suggested to us that really there was not any problem because, while the Government paid late in many cases, it paid bills a lot earlier than it had to in other cases, an argument that, as I have noted in my prepared statement, reminded me of something Gracie Allen might have said to George Burns, but really did not give us much faith in the Government's financial managers.

After this review, we were clearly convinced that prompt payment simply was not a high priority for the Federal Government, and that no amount of administrative saber-rattling or GAO studies were going to do anything to change the slipshod way in which the Government paid its bills. So at that time, Senator Danforth, together with Chairman Weicker and some 21 cosponsors, introduced S. 1131, the Delinquent Payments Act, which became in due time the Prompt Payment Act.

Now I am very pleased and, to be honest, a little proud that in the years subsequent to the enactment of the act we have seen a substantial improvement in the Government's bill-paying practices, but there is no question that inequities remain and that more can and should be done.

I have read the transcript of the hearing that you held in Norfolk, Senator Trible, and I have reviewed the legislation that you have introduced, and I think that the amendments that you have proposed make very good sense. Unfortunately, the problems that were identified by the witnesses in the Norfolk hearing and some of the issues that have been raised by Kenton Pattie here this morning were not unexpected when the Prompt Payment Act was first written. In large measure they stem from concessions that were made at that time at the urging of the executive branch or, in other cases, from creative interpretations of the act that simply ignore the plain language of the statute.

Now at the outset I want to emphasize that the inclusion of clearly defined payment terms in all Federal procurement contracts is absolutely critical to the success of any effort to secure prompt payment. Without payment terms in the contracts themselves or some payment standards in generally applicable laws or regulations, the task of evaluating early or late payment, while not impossible, takes on certain metaphysical as opposed to legal properties.

As we noted in the report of the Governmental Affairs Committee, some of the problems associated with the Government's cash management practices can be traced to nonspecific payment terms in Government contracts. Indeed, the lack of clearly defined payment terms not only costs contractors money in late payments, it also costs the Government money in early payments. By paying bills when due instead of early, the GAO estimated in 1978 that the Government could save anywhere from $900 million to $3.8 billion in foregone interest. This was a principal finding of that 1978 study.

So to correct these problems, the Prompt Payment Act directed the promulgation of regulations providing for payment terms in all Government procurement contracts. But 4 years later, there are still no provisions in the Federal acquisition regulation setting forth authority to specify payment terms. Therefore, you are certainly right to include language in these amendments directing the amendment of the FAR itself to include provisions for payment terms, and in specifying exactly how those provisions should read. These regulations are the keystone of the effort to ensure prompt payment.

Another problem that must be addressed is the 15-day grace period. I am quick to say that the grace period was not created by the Senate, but was instead put in the legislation by the House to avoid administrative problems that might be occasioned in calculating minor interest penalties when the Government missed a payment date by a few days. The executive branch argued at that time, and persuasively, that the grace period was essential to avoid substantial payments as the Government revised its payment practices to meet the requirements of the legislation.

So we put a 15-day grace period into the act as a temporary measure. The 15-day grace period was never intended to be a license to financial managers to pay bills in 45 days instead of the 30 days typically afforded for payment. The House report said as much.

Nonetheless, as your hearings discovered in Norfolk, that is exactly what has happened. Agencies have had 4 years of experience under the act now, and on the basis of this experience they should be able to pay their bills in the time allotted for payment without resorting to a grace period to tide them over. So the proposal to phase out the grace period and to ease agencies into prompt payment by providing an 8-day payment period in the short run makes very good sense to me.

You are also right I think to tighten the provisions of the act respecting receipt of an invoice to ensure that contractors are promptly informed if an invoice is in error, and to ensure that the clock starts running against the Government on receipt of a proper invoice.

Since prompt payment is keyed to receipt of a proper invoice, agencies currently have every incentive in the world to delay receipt or even, shall we say, lose an invoice to avoid prompt payment penalties. So your proposal to declare an invoice deemed to be received on the later of the actual date of receipt, or 5 days from delivery of goods or services, should deprive the agencies of an effective means to avoid their responsibilities under the act.

I also think you are right in making it clear that payment of interest penalties should be automatic. This most definitely was the intent of the original act. Requiring contractors to ask for interest penalties in my view only adds insult to injury. When a contractor meets the obligations of the contract and submits a proper invoice, timely payment is the law and interest penalties for late payment are a matter of right. You are justified, therefore, not only in directing automatic payment of interest, but also in doubling the interest penalty in cases where the agency intentionally or capriciously holds back interest payments and forces the contractor to demand payment.

Finally, I think you are right in making clear that the act is intended to apply to progress payments. This was always the intent. Nonetheless, progress payments have been said to be outside the scope of the act, and this just simply makes no sense. It is just as important for progress payments to be paid on time as it is for any other payments to be made on time, and the Government should expect to suffer penalties when it does not live up to the terms of its agreements.

Mr. Chairman, when the Prompt Payment Act was written Senator Chiles said that life is full of small victories, and passage of this bill will certainly be one of them. He was certainly right. In the best of all possible worlds, it should not be necessary for Congress to pass a law in order to get the Government to pay its bills on time, and it certainly should not be necessary to come back and amend the law to ensure compliance. After all, in any procurement system there are few things as fundamental as paying bills on time.

Nonetheless, the Federal procurement system being something less than the best of all possible worlds, it is sometimes necessary to write laws to accomplish what ought to be fundamental business practice. This is one occasion when legislation is a necessity.

I hope and trust the legislation will find smooth passage in Congress and the President will support it. I am willing to work with you in that effort, and to assist you in your work in every way possible.

[The prepared statement of Mr. Brewster follows:]

Senate Committee on Small Business, June 19, 1986

TESTIMONY OF CHRISTOPHER R. BREWSTER

Kaye, Scholer, Fierman, Hays & Handler

(Formerly Chief Counsel, Subcommittee on
Federal Expenditures, Research, & Rules,
U.S. Senate Committeee on Governmental Affairs)

The Prompt Payment Act Amendments of 1986

Mr. Chairman and members of the Committee, my name is Christopher Brewster. Although I am currently in the private practice of law with the firm of Kaye, Scholer, Fierman, Hays & Handler, I served as Chief Counsel of what was then called the Subcommittee on Federal Expenditures, Research, and Rules of the Committee on Governmental Affairs during consideration of the legislation that became the Prompt Payment Act, P.L. 97-177, and in that capacity served as one of the principal staff drafters of the Senate bill. I am pleased to have this opportunity to testify before the Committee concerning the Prompt Payment Act. I salute you and Senator Trible for your leadership in undertaking these hearings, and in sponsoring S. 2479, the Prompt Payment Act Amendments of 1986.

The Subcommittee on Federal Expenditures was charged with oversight responsibility for the Federal procurement process. When Senator Danforth assumed the Chairmanship of the Subcommittee in 1981, he directed the staff to review the procurement system to identify opportunities for reform. To that end, the staff met with all sorts and conditions of government contractors, from large multinational corporations to small mom & pop companies. In meeting after meeting -- but most often in our meetings with small businesses -- we repeatedly heard complaints about the problems encountered in getting the government to pay its bills on time. Contractors recited story after story of delays in obtaining payment that betrayed a shocking insensitivity on the part of the government to the hardships encountered by businesses, especially small businesses, when payments were late. To make matters worse, we were told that the Government sometimes had the gall to take "quick pay" discounts after making contractors wait weeks, or even months for payment. This anecdotal evidence was bolstered by a 1978 GAO study that found some 30% of invoices were paid late for no good reason whatsoever. All in all, the GAO estimated that $9.8 billion in Federal contracts were paid late during the six month sampling period covered by the study.

We sought explanations from government managers and were met instead with lame excuses. At one point it was suggested to us that no real problem existed because the government's late payments were balanced out by many cases where the government paid bills a good deal earlier than it had to, an argument that reminded us of something Gracie Allen might have said to George Burns, and that somehow failed to give us great faith in the government's financial managers. In short order, we became convinced that prompt payment simply was not a high priority for

Federal agencies, and that no amount of administrative saber rattling or GAO studies would do anything to change the slipshod way in which the government paid its bills. Therefore, Senator Danforth, together with Chairman Weicker and some 21 cosponsors, introduced S. 1131, the Delinquent Payments Act, which became, in due time, the Prompt Payment Act. The legislation, as you know, requires the Federal government to write payment due dates into its contracts, pay its bills when due, and pay interest when it fails to pay within 15 days after the payment due date. Interest penalties are to be paid out of agency budgets.

I am very pleased, and to be honest, a little proud that the years following enactment of the Prompt Payment Act have seen a substantial improvement in the government's bill paying practices. Nonetheless, there is no question that inequities remain, and that more can and should be done to ensure that government contractors are treated fairly by their government.

I have read the transcript of the hearing that was held by Senator Trible in Norfolk concerning the implementation of the Prompt Payment Act, and I have reviewed the legislation that he introduced with Chairman Weicker, Senator Bumpers, Senator Danforth, and others, to correct abuses that persist four years after the Prompt Payment Act was signed into law.

The proposed amendments make good sense. Unfortunately, the problems identified by the witnesses at the Norfolk hearing were not unexpected when the Prompt Payment Act was first written. In large measure they stem from concessions that were made by Congress, at the urging of the Executive Branch, or from creative interpretations of the Act that simply ignore the plain language of the Act.

At the outset, I should point out that the inclusion of clearly defined payment dates in all Federal procurement contracts is absolutely critical to the success of any effort to secure prompt payment. Without payment terms in contracts, or some payment standards in generally applicable laws or regulations, the task of evaluating early or late payment, while not impossible, takes on certain metaphysical properties. As was noted in the report of the Governmental Affairs Committee on S. 1131, many of the problems associated with the government's cash management practices can be traced to non-specific payment terms in government contracts. Indeed, the lack of clearly defined payment terms not only cost contractors money in late payments -- it also costs the government money in early payments. By paying bills when due, instead of early, the GAO estimated in that 1978 study that the government could save anywhere from $900 million to $3.8 billion in foregone interest. This was a principal finding of the 1978 study, and ought not to be forgotten.

To correct these problems, the Prompt Payment Act directed the promulgation of regulations providing for payment terms in all government procurement contracts. Nonetheless, four years later, there are still no provisions in the Federal Acquisition

PROMPT PAYMENT PERFORMANCE

RANK BY PERCENT OF PAYMENTS WITH INTEREST PENALTIES

1983		1984		1985	
DEPARTMENT	% FREQUENCY	DEPARTMENT	% FREQUENCY	DEPARTMENT	% FREQUENCY
Energy	2.08	Education	3.70	Education	3.70
DOT	1.75	Energy	2.60	Commerce	2.96
Education	1.09	HUD	1.94	Energy	2.40
Labor	0.93	DOT	1.70	DOT	1.85
Defense	0.88	Agriculture	1.26	Agriculture	1.57
Agriculture	0.73	Defense	1.08	Interior	1.46
Justice	0.59	Interior	0.97	GSA	1.04
SBA	0.54	VA	0.70	Labor	0.90
HHS	0.46	HHS	0.65	VA	0.83
Interior	0.37	GSA	0.40	Defense	0.81
VA	0.25	Justice	0.40	HUD	0.70
Commerce	0.24	Treasury	0.37	HHS	0.66
Treasury	0.18	Commerce	0.34	Treasury	0.60
NASA	0.16	SBA	0.31	NASA	0.40
GSA	0.10	State	0.08	SBA	0.35
OPM	0.09	OPM	0.03	Justice	0.20
HUD	0.06	EPA	0.00	OPM	0.02
State	0.06	Labor	0.00	EPA	0.00
NSF	0.02	NASA	0.00	NSF	0.00
EPA	0.00	NSF	0.00	State	0.00

Source: Office of Management and Budget

Prepared by the Coalition for Prompt Pay

Regulation (FAR) setting forth authority to specify payment terms. You are right, therefore, to include language in the Prompt Payment Act Amendments directing the amendment of the FAR to include provisions for payment terms, and in specifying exactly how those provisions should read. These regulations are the keystone of the effort to ensure prompt payment.

Another problem that must be addressed is the fifteen day grace period. As you know, the fifteen day grace period was not created by the Senate, but was instead put in the legislation by the House to avoid administrative problems that might be occasioned in calculating minor interest penalties when the government missed a payment date by a few days. The Executive Branch financial managers told us this grace period was essential to avoid imposing substantial costs on the government, especially as the government began to revise its payment practices to meet the requirements of the legislation. And so, a fifteen day grace period was allowed under the Act.

The fifteen day grace period was never intended to be a license to financial managers to pay bills in forty-five days instead of the thirty days typically afforded for payment, and the House report said as much. We suspected, however, that the grace period would be abused, and your hearings confirm that suspicion. Your proposal to phase out the fifteen day grace period therefore makes very good sense to me. Agencies have now had four years of experience under the Act. They should be able, on the basis of this experience, to pay their bills in the time alloted for payment without resorting to a grace period to tide them over, and your proposal to ease them into prompt payment with an eight day grace period is sufficiently generous to allow for any dislocations that might occur.

You are also right to tighten the provisions of the Act respecting receipt of an invoice, to ensure that contractors are promptly informed if an invoice is in error, and to ensure that the clock starts running against the government on receipt of a proper invoice. Since prompt payment is keyed to receipt of a proper invoice, agencies have every incentive in the world to delay receipt, or even lose an invoice, to avoid prompt payment penalties. Your proposal to declare an invoice received on the later of the actual date of receipt or five days from delivery of goods or services should deprive agencies of any effective means to avoid their responsibilities under the Act. I should note that the government has the opportunity, under your bill, to specify a longer period for acceptance of goods or services at the time the contract is written, and this is appropriate. When contractors know, up front, that they can expect delays in payment, they can build in this cost when they prepare bids. Currently, they are at the mercy of the agencies, and that is simply wrong.

You are right in making it clear, through this legislation, that payment of interest penalties should be automatic. This was the intent of the original Act. Requiring contractors to ask for interest penalties only adds insult to injury. It also plays upon the reluctance some contractors have to "rock the boat" and risk opportunities for future contracts. Moreover, since interest penalties accumulate daily, contractors are hard pressed, as a practical matter, to calculate interest penalties.

When a contractor meets the obligations of the contract and submits a proper invoice, timely payment is the law, and interest penalties for late payment are a matter of right. You are justified, therefore, not only in directing automatic payment of interest, but also in doubling the interest penalty in cases where the agency intentionally or capriciously holds back interest payments and forces the contractor to demand payment.

Finally, I think that you are right in making clear that the Act is intended to apply to progress payments. This was always the intent. The Act provides for "separate payment dates for contracts under which goods or services are provided in a series of partial executions or deliveries to the extent the contract provides for separate payments for partial execution or delivery." Nonetheless, progress payments have been said to be outside of the scope of the Act. This makes no sense. It is just as important for progress payments to be paid on time as it is for any other payments to be made on time, and the government should expect to suffer penalties when it does not live up to the terms of its agreements.

Mr. Chairman, when the Prompt Payment Act was written, Senator Chiles observed that "life is full of small victories, and passage of this bill will certainly be one of them." He was certainly right. In the best of all possible worlds, it should not be necessary for Congress to pass a law in order to get the government to pay its bills on time -- and it certainly should not be necessary to come back and amend the law to ensure compliance.

After all, in any procurement system there are few things as fundamental as paying bills on time. Nonetheless, the Federal procurement system being something less than the best of all possible worlds, it sometimes becomes necessary to write laws to accomplish what ought to be fundamental business practice, and this is one occasion when legislation is a necessity. I hope and trust that this legislation will find smooth passage in Congress and that the President will support it. I am willing to work with you in that effort, and to assist you in your work in every way possible.

Senator **Trible**. Mr. Brewster, I thank you for your fine testimony and for your good efforts through the years. Before I ask you gentlemen a couple of quick questions, I would like to call on my distinguished colleague, Senator Pressler.

Senator **Pressler**. Mr. Chairman, I ask unanimous consent to place a statement in the record. I commend you for holding this hearing. I apologize that I have four hearings and two markups going on this morning, one of which is the products liability markup which I know our chairman has worked on a lot. So I will be going back to that.

I would like to put my statement in the record, and I shall listen here until my staff tells me I must be back for another vote.

Senator **Trible**. That is the story of our life, being in many places at one time.

I thank you, Senator Pressler, and your statement will be made a part of the record.

[The prepared statement of Senator Pressler follows:]

STATEMENT OF SENATOR LARRY PRESSLER
BEFORE THE SENATE COMMITTEE ON SMALL BUSINESS
OVERSIGHT HEARING ON PROMPT PAYMENT ACT
JUNE 19, 1986

I WOULD LIKE TO THANK THE CHAIRMAN FOR CALLING THIS HEARING TO REVIEW THE IMPLEMENTATION OF THE PROMPT PAYMENT ACT OF 1982. THE PROMPT PAYMENT ACT WAS ENACTED TO IMPROVE THE BILLPAYING PRACTICES OF FEDERAL AGENCIES DOING BUSINESS WITH THE PRIVATE SECTOR. IT IS A WORTHY GOAL, BUT IT APPEARS THE ACT HAS NOT BEEN AS SUCCESSFULLY IMPLEMENTED AND ENFORCED AS WAS ORIGINALLY INTENDED.

ONE OF THE DRIVING FORCES BEHIND THE PROMPT PAYMENT ACT WAS TO STIMULATE COMPETITION THROUGH IMPROVING THE FEDERAL GOVERNMENT'S "SLOW-PAYING" REPUTATION WITH SMALL BUSINESS. FRANKLY, THE GOVERNMENT DOES NOT ALWAYS CONDUCT ITS AFFAIRS IN A BUSINESS-LIKE MANNER. THE RESULT WAS THAT MANY SMALL BUSINESSES WHO HAD CONTRACTS WITH THE FEDERAL GOVERNMENT FOUND IT DIFFICULT IF NOT IMPOSSIBLE TO RECEIVE TIMELY PAYMENT FOR SERVICES RENDERED. MANY SMALL BUSINESSES, OFTEN OPERATING ON A VERY NARROW MARGIN OF PROFIT, SIMPLY COULD NOT AFFORD TO DO BUSINESS WITH THEIR GOVERNMENT. THIS MEANT FEWER BUSINESSES VIED FOR GOVERNMENT CONTRACTS AND, IN THE FINAL ANALYSIS, ALL AMERICANS SUFFERED BECAUSE THEY WERE NOT RECEIVING AS MUCH FOR THEIR MONEY AS THEY HAD A RIGHT TO EXPECT.

THROUGH THE PROMPT PAYMENT ACT IT WAS HOPED THAT MORE SMALL BUSINESSES WOULD BE ENCOURAGED TO COMPETE FOR GOVERNMENT CONTRACTS. UNFORTUNATELY, IN THE THREE YEARS SINCE THE IMPLEMENTATION OF THE ACT, IT APPEARS THAT THE ORIGINAL INTENT OF CONGRESS HAS NOT ENTIRELY BEEN MET. IT IS FOR THIS REASON THAT THIS HEARING IS SO IMPORTANT.

Although the Office of Management and Budget tells us that agencies are paying 99 percent of their bills on time. This nation's small business community tells a different story. At the very least, it has become apparent that the definition of "on time" is not entirely clear. This hearing is in direct response to a resolution adopted by this Committee's National Advisory Council on October 23, 1985.

I must interject at this point that I am proud to say that my representative on the Council, Herb Bowden, president of Sencore, Inc., Sioux Falls, South Dakota was recently named by the Small Business Administration as South Dakota's Small Business Person of the Year. Let me say that I truly value Herb's advice in his capacity as a member of the Council and as a exceptional small business leader.

Among other things, the Council officially noted in its deliberations that some agencies are abusing the fifteen day "grace period" allowed for in the Act by not initiating payment on contractors' invoices until the expiration of thirty days. In some cases, it has been alleged, federal agencies have delayed payments to contractors by refusing formal acceptance of supplies, services or construction, thus delaying the start of payment periods mandated by the Act. There have been instances where agencies have rejected contractors' invoices as improper after the 15 days provided in the Act, thus delaying payment. Finally, we have been told that some agencies have made payments after the date specified in the contract, but have failed to pay interest on the amount owed.

Problems such as these need to be explored. I am hopeful that the Committee will consider most if not all of them during today's hearing. The Prompt Payment Act can benefit both the government and the private sector. However, in order for it to do so, Congress must ensure its original intent is carried out.

Senator **Trible**. Let me ask each of you the same question. I would like you to respond to the points that OMB will make in presenting its testimony today.

OMB's statement makes basically three points. First, that the implementation problems identified are best handled through administrative action, revisions to OMB Circular A-125, additions to the Federal Procurement Regulations, rather than the amendments contemplated by this act.

Second, that elimination of the grace period would still produce problems in unnecessary cost to the Government in the payment of many small interest penalties for payments a few days late.

Third, that any legislative changes along the lines of this legislation could require extensive, and I quote, "retooling" of the Government's extensive and highly automated payments system with a disruption slowing overall payments.

Would you gentlemen care to respond to those three points?

Mr. **Pattie**. Senator, I would be glad to start.

With respect to solving the problem in an administrative way, I think they have made every effort through A-125 to resolve the problems that are outstanding with the act. My feeling is, as I expressed in my statement, that they have tried. We are here several years later, as Chris has pointed out. We expected to see these problems resolved, and they have not been resolved. John Lordan has done his best. He has admonished the agencies as best he can, I think he needs the stick. He needs the teeth that you are going to give him through your bill to get this job done.

With respect to the cost to the Government, I think we have always found that prompt payment is to the Government's best interests. I know John Lordan and I have been on panels where he has spoken to this as well. The Government benefits from the certainty—that the company knows that when they are bidding—that they are going to be paid within a certain time. The costs to the Government are far outweighed by the benefit to the Government of getting a date certain set when the company knows they are going to get paid, and then knows how to set its price accordingly. Otherwise, without that certainty, the Government is going to eventually pay for the uncertainty, because the Government is going to have an increased price offer by the company, never knowing exactly when they are going to get paid by the Government.

With respect to retooling, I just find that an unacceptable argument. The computers are all designed to pay the interest, to make the payments on or about the 30th day. The 15 days has nothing to do with the computers; it is when they issue the check. If we were going to move the 30 days down to 25 days or 15 days, then I would see a change that would have to be made to the computers. But in this case we are not talking about the crucial cost to the Government in the way the computers are set up now. By the way, I might say that in 1982 they made all of the adjustments with very little disarray in the Government. I do not know of any major costs that were incurred. They were able to do it, and I am sure they will with the 2 years that you have given them to make the proper adjustment and do it without any major cost to the Government.

Senator **Trible**. Mr. Brewster.

Mr. **Brewster**. I would concur in everything that Kenton Pattie has just said. Back in 1978, when the GAO study was done, we were told that no legislation was necessary, that administrative solutions would take care of the problem.

In 1981, when we held the hearings, we were told that no legislation was necessary, administrative solutions would take care of the problem.

In 1982 when we actually enacted the law, we were told that the problem would definitely be taken care of.

Four years later, we are back here. There is very little question in my mind that legislative direction is going to be necessary in order to provide the necessary clout for reform. So I just simply find the argument for administrative remedies unacceptable.

With respect to the 15-day grace period and the problems that OMB foresees in the phaseout of the grace period, what OMB is really saying is that the Government cannot do the job of paying its bills within a 30-day payment period. Now if that is the case, then the Government ought to tell contractors that up front. They ought to say, "we are not going to pay bills within 30 days; we are going to pay them within 40 days. Those are the payment terms for these contracts. Then you can build that cost into the contract when you do business with the Government." But that is not what happens currently.

What happens right now, and what would happen if the 15-day grace period were allowed to continue, is that contractors would continue to be told they were going to be paid within 30 days and they would not be; they would be paid within 45 days. The fact of the matter is, as Kenton Pattie testified earlier, the tools are there for the agencies to pay these bills within the time that is allotted for payment.

Master Charge does not give me an extra 15 days when the bill is due. VISA and Sears do not give me an extra 15 days. I think the Federal Government should play by the same rules.

Finally, the argument that retooling of the payment system will impose excessive costs also ignores the fact that the legislation that you have proposed here is not a massive overhaul of the Federal procurement system. What you are simply saying is that the Federal Government ought to pay its bills on time. The kind of reforms you have put together are really, really nothing more than a fine tuning of the 1982 law.

Senator **Trible**. Well, I thank you. I of course agree with your testimony and your response to my question, but I once again want to acknowledge your leadership and your substantial contribution to this whole prompt-pay process, and I look forward to working with each of you in the days ahead. Thank you very much.

Mr. **Pattie**. Thank you, Senator.

Senator **Trible**. Next let me call forth panel 2, Joseph Schaedel, John Satagaj, David Davis, and T.L. Richards.

Mr. Lavallee, I understand that you are here today on behalf of Mr. Satagaj?

Mr. **Lavallee**. That is correct.

Senator **Trible**. If we can have a measure of order in the hearing room, we will proceed with panel 2. Mr. Schaedel, you are listed first, so why do we not call on you first for your testimony today.

You are the executive assistant for finance for Poseidon Industries in Chesapeake, VA. You are most welcome. Please speak into that microphone so everyone can hear.

Again, gentlemen, your full statements will be made a part of the record as given. You are invited to summarize those statements, or read them in full, but I prefer for you to summarize them.

STATEMENT OF JOSEPH A. SCHAEDEL, EXECUTIVE ASSISTANT FOR FINANCE, POSEIDON INDUSTRIES, LTD., CHESAPEAKE, VA, ON BEHALF OF THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Mr. **Schaedel**. Mr. Chairman, I appreciate the opportunity to testify today on the implementation of the Prompt Payment Act. My name is Joseph Schaedel. I am appearing here today on behalf of the National Federation of Independent Business, which represents over a half million small and independent businesses. I would like to submit their formal statement for the record.

Senator **Trible**. It will be made a part of the record.

Mr. **Schaedel**. Thank you, sir.

I am a partner in Poseidon Industries, Ltd. We are a manufacturer of an epoxy resin seamless floor covering, which the Navy has approved for use aboard ships. Approximately 75 percent of our business is with the Navy, in the Tidewater area, as well as in Philadelphia, Charleston, and San Diego, and we are grateful for this business.

Over the years since Poseidon began doing business in 1978, our experience with the Government's payment procedures, has been that they have been anything, but prompt. There is no doubt in my mind that the Prompt Payment Act has helped. However, the fact that finance agencies elect to pay in the final day of a 30-day period, or on the 45th day if the grace period is included, seems to make the practical implementation of this act a "delayed payment act." It is certainly an abuse of the spirit, if not the letter, of the law.

I have documentation citing 74 incidents of slow payment of our invoices between the years 1983 and 1985. To add insult to injury, the majority of these cases, 36 to be exact, the Government took a discount after having dragged their feet on paying the bills. The worst case was 240 days, by U.S.S. *Prairie*. In 29 of these cases, no interest was paid despite delays which on several occasions exceeded 100 days; worst case, 238 days, U.S.S. *Puget Sound*. In the interest of presenting a balanced picture, nine of these cases did result in interest payments being made to Poseidon Industries.

I applaud your bill 2479 which addresses some of the weaknesses in the law, and would like to take this opportunity to suggest two specific modifications.

The first, I would suggest elimination of the grace period right now. The Government has had 4 years to make the necessary adjustments in their payment procedures, and as both a small business owner, and a taxpayer, I believe this is long enough. I have cited 74 incidences of slow payment. In this same period of time, there have been hundreds of other invoices of ours which have been paid within our discount terms, which at the beginning of this timeframe was 20 days, and now is 10 days. So the excuse that it is administratively necessary, is called into question.

The second suggestion has to do with the definition, as to when the head of an agency, is deemed to have received an invoice. The present wording is on the later of two options. I would recommend that S. 2479 be changed to read "the sooner of these two options." I urge the committee to consider the very real predicament small businesses face when they are not paid on a timely basis. Small firms operate on a tight cash-flow situation, trying to maintain a precarious balance between payables and receivables. We cannot afford to carry any customer for an indefinite period of time, even if it is the U.S. Government. Most small businesses have a very close working relationship with one agency of the Government, namely the IRS, and I can assure you that the IRS does not provide grace periods or allow any latitude by small businesses in meeting their obligations.

In addition, NFIB supports the Senator's efforts to strengthen the section of the law, relating to unjustified discounts taken after the prescribed period. We are also pleased to note the language of S. 2479 relating to progress payments and retainage. NFIB believes the Government should behave like any other customer. If they are in receipt of partial deliveries, or partial contract execution, they should make partial payments, or pay interest.

While we at Poseidon do not have personal experience, in the area of negligent payment from our prime contractors, NFIB has advised me that they have file folders full of complaints on this matter. The original law was silent, with regard to the coverage under prompt payment for subcontractors. NFIB hopes this error will be corrected in any bill that moves through the Congress which modifies the act. They recommend that the prime contractors be required to pay their subcontractors within 7 days of receipt, of payment, from the Federal Government, or face payment of late fees in line with those paid by the Government, under Public Law 97-177.

Where Government dollars are involved in the payment process, appropriate interest penalties should be paid by any entity that abuses the system. That should include payment to Medicare providers and grant funds, as well as construction contracts.

In closing, let me say that NFIB believes the Government should be held accountable for all its payments. While tremendous progress has been made in this area, we would suggest that the Government needs to be more conscientious about their payment performance. Thank you.

[The prepared statement of Mr. Schaedel follows:]

NFIB® National Federation of Independent Business
The Guardian of Small Business®

STATEMENT OF

JOE SCHAEDEL
EXECUTIVE ASSISTANT, POSEIDON INDUSTRIES, LTD.

ON BEHALF OF THE

NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Before: Senate Small Business Committee
Subject: Implementation of P.L. 97-177, The Prompt Pay Act
Date: June 19, 1986

Mr. Chairman, the National Federation of Independent Business, on behalf of its over half million members, appreciates having this opportunity to testify today on implementation of the Prompt Pay Act. We also welcome the chance to comment on Senator Trible's bill, S. 2479, which addresses some of the weaknesses in the law.

It is interesting to note that once again the Small Business Committee is taking the initiative in the ongoing effort to deal with the problems facing small government contractors. The initial hearings on late payments were held by this Committee nine years ago. In addition, the successful effort to pass meaningful procurement reform began in the Small Business Committee. Our members are grateful for your continuing interest in these matters.

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Sen. Trible is to be specifically congratulated for his personal oversight of the implementation of P.L. 97-177, the Prompt Pay Act. His hearings late last year in Norfolk set the stage for today's session. Now is the time to clarify the Congressional intent of the original law and close some of the administrative loopholes in that statute. NFIB is pleased to see Sen. Trible introduce legislation which begins that process.

Today, government contractors of all sizes report obvious improvements in the payment process since enactment of this law in 1982. Before passage of P.L. 97-177, only sixty-one percent of the government's bills were paid within thirty days. According to OMB that record has improved to ninety-nine percent. In 1983 a total of $2.9 million in interest penalties were paid out. That represents 180,000 late payments out of twenty-three million payments. The Defense Department is the biggest offender, accounting for sixty percent of those late payments. With these interest charges coming directly out of the administrative funds for each agency, we have been able to provide the correct incentive for timely processing of invoices. The result has been improved agency implementation of the law each year.

I wish that I could say that NFIB no longer receives complaints from its members on the government's payment process. However, we continue to hear from our members on spotty implementation of the Act. And I am certain the hearings being held by this Committee will produce further evidence that late payments continue to be a problem which merits serious attention. In many cases, late payments alone have deterred small firms from doing business with the government. We think the government suffers when this happens: it is denied access to the most competitive, innovative sector of our economy for its needed goods and services. We feel strongly that there is no justifiable reason for delaying payment to a contractor who has fulfilled his or her contractual obligations and has submitted a proper invoice. Now is the time to eliminate the ambiguities in the law to include all government payments.

We have some specific suggestions we would like to present to the Committee for review. Some of these areas of concern have already been addressed in Sen. Trible's bill, S. 2479. Others we hope will be added during Senate Government Affairs Committee consideration of this legislation. First, let's look at the solutions posed in S. 2479.

RECEIPT OF PROPER INVOICE

Without a doubt the single most abused and ambiguous section of the law relates to government receipt of a proper invoice. The date on which the designated payment office or finance center of an agency actually receives a proper invoice is the date the clock begins to tick in the payment process. Interest penalities begin accruing thirty days from that date, but frequently one to three months have already passed before the invoice reaches the payment center. While agencies report a ninety-nine percent on-time payment record, this does not accurately reflect the situation from the contractor's point of view. There continues to be a lengthy trail of paperwork before an invoice is considered "received" by the appropriate payment office.

Several NFIB members have written complaining about signed invoices being "lost" by the contracting officer. A concrete company owner wrote us in March about work she had successfully completed for the Navy during August and September of the preceeding year. The project was inspected in October and certified. The project manager indicated he "lost" the invoice and requested they begin the billing process all over again five months later. It is often the vendor's word versus the agency official's word that the invoice was ever received. Many business people are hesitant to challenge the word of the contracting officer, especially if they want to do business with that official in the future.

S. 2479 attempts to be more specific and to narrow the time frame by amending the law to read that "the head of an agency is deemed to receive an invoice on the later of A) the date on which the designated payment office or finance center of the agency actually receives a proper invoice or B) on the fifth day after the date on which the property is actually delivered or final performance of a service is actually completed in accordance with the terms of the contract unless the contract specifies a longer period of time." We would suggest that the agencies are already using option A as a loophole to provide them with more time to process the paperwork. They need a Congressional mandate to expeditiously process proper invoices. NFIB recommends that S. 2479 be changed to read the sooner of these two options. We urge the Committee to consider the very real predicament small businesses face when they are not paid on a timely basis according to accepted commercial practices. Small firms operate in a tight cash flow situation, trying to maintain a precarious balance between payables and receivables. They cannot afford to carry any customer for an indefinite period of time, even if it is the U.S. government. The time between delivery of their product and receipt of their invoice by the accountable agency official can often become a guessing game which they literally cannot afford to play.

We have also noted complaints from our members regarding notification from agencies that their invoices were somehow "improper". We are all in agreement that the government should not have to process a payment without receipt of the prescribed paperwork. The Act specifically spoke to this point when it required the head of an agency to notify the business concern of a defect or impropriety in the invoice within fifteen days. This is not always the case, however. Some agency officials are negligent in their responsibilities to report back to the business within that fifteen day period. Our members are anxious to comply with the law, especially when it means dollars in their bank accounts. We are hopeful that the additional data collected in the annual reports as specified in Sec. 7 of Sen. Trible's bill will provide some insight into any abuses in this area.

Along these same lines, we would encourage you to provide a method for identifying the specific person responsible for solving payment problems within each agency. If OMB required that such person be identified on each contract, perhaps much of the confusion among vendors could be eliminated.

PHASING OUT THE GRACE PERIOD

During the final negotiations on the original Prompt Pay Act, the Administration was successful in persuading the Congress that it needed some time to implement the changes in their payment process mandated by the Act. The Administration was able to get the Congress to accept a fifteen day "grace period" in addition to the initial thirty days to process their payments. This means that if payment is made within the "grace period", then there is no interest paid. If payment is not made by the forty-fifth day, interest accrues from the thirty-first day. In practice, this has allowed the government forty-five days to pay its bills rather than the intended commercial norm of thirty days.

NFIB considers government directives that advise finance officers to use the entire forty-five day period before issuing payment an abuse of the spirit, if not the letter, of the law. Our small business members are not given a "grace period" by their creditors or by the IRS, which demands prompt payment on their accounts. For just these very reasons, one NFIB member commented to us that "the 'grace period' galls him more than anything else."

Most of the thirty or more states that have passed similar prompt pay legislation either do not include a "grace period" at all or have a period that phases out after a certain number of years.

The government has had four years to make the necessary adjustments in their payment procedures. Now is the time to eliminate the "grace period." We congratulate Sen. Trible for recognizing the abuses inherent in this section of the law and for phasing out the "grace period". His bill reduces to eight days the length of this period through October 1, 1988, then eliminates it entirely.

LIMITATIONS ON DISCOUNT PAYMENTS

In no other step of the government's payment process is the potential for saving millions of dollars more obvious than in the "fast pay" discount offered by most vendors. In an effort to get paid quickly, contractors will offer the government a discount (two to three percent) if they are paid in ten to fifteen days. Discount payments, offered as reward for prompt paying customers, are being abused by the government. We often wonder why more agencies don't use this opportunity to save taxpayer dollars rather than abusing the fifteen day "grace period." Some agencies have decided to do both. They continue to take the discount after the perscribed period has expired. Not only is the vendor not getting paid on time, he or she is not getting complete payment.

Although the law specifically prohibits this practice, we continue to hear from our members that this is a problem. We are glad to see language in S. 2497 to strengthen this section of the statute. Interest would accrue from the date the invoice was received rather than simply charging interest on the improperly taken discount.

AUTOMATIC PAYMENT OF INTEREST

NFIB was disappointed to see that some agencies require contractors to make written demands for interest fees legitimately due them. Sen. Trible's bill clarifies that interest payments exceeding $1.00 shall be automatically paid to the vendor. As a further incentive to the procuring agency to keep up with these late fees, a contractor will be eligible for twice the interest penalty due him or her if fifteen days expire following the payment date and no late fee has been received. Vendors will still have to put these demands in writing, but the government will have to pay for their laxity.

PROGRESS PAYMENTS AND RETAINAGE

Quite frankly, NFIB is as disappointed as the Committee is that we must once again address the problems associated with overdue progress payments. Both House and Senate Committee reports that accompanied P.L. 97-177, as well as the law itself, dealt with interest penalties on these types of payments. Specifically, House Report 97-461 states: "To the extent that contracts involving a series of partial payments or executions provide for separate payments, OMB's regulations shall specify separate dates when payment is due. This provision is intended to cover situations where the government and a business concern contract for separate payment for partial deliveries or executions; for example, progress payments." The Congress could not have been clearer in its intent in such cases.

Yet we continue to receive complaints from members, especially in the construction field, that progress payments are not subject to the Prompt Payment Act. One member was awarded a contract to build a main post office building in California in September. Work began shortly thereafter. As of April, they had yet to receive any progress payments from the government. In his letter to the Postal Service, our member states: "We categorically deny that we are in non-compliance with the contract. Further, we resent your threats and attempts at intimidation."

NFIB believes the government should behave like any other customer; if they are in receipt of partial deliveries or partial contract execution, they should make partial payments. We were very disappointed, therefore, in OMB's position on this matter as reflected in OMB Circular A-125. We feel their interpretation contradicts the law and excludes progress payments from this Act. While we were glad to see S. 2479 address this problem, we would prefer the clarification not be limited to construction contracts. The current law makes no distinction, and we would prefer to keep it that way.

The problem of retainage is another matter, however. While representatives from the construction industry can address this issue in greater detail, let me say that NFIB agrees that retainage on progress payments should be limited to very specific, extraordinary circumstances. Where retainage is used, interest on that retained amount should be paid thirty days after satisfactory completion of construction. We think specific mention of this matter in Senator Trible's bill is warranted.

PROMPT PAY FOR SUBCONTRACTORS

Another issue that concerns NFIB members is the processing of payments to subcontractors on government contracts. The law is silent in this regard, yet we have file folders full of complaints to prove that it is a serious problem. Your Committee acknowledged this problem when it included a policy statement in the Small Business and Federal Procurement Competition Enhancement Act (P.L.98-577) that encourages prime contractors to adopt procedures to provide timely payment to their subcontractors.

One member in Redding, California described the following scenario:

> We install heating and air-conditioning systems in commercial and residential buildings. Most of our work is done as sub-contractors for a general contractor....The problem is, it seems to take anywhere from forty-five to ninety days from the date of our billing to get payment. By that time, we could be almost done with our job and only have received payment for twenty percent of the contract. Meanwhile our payroll costs continue and our suppliers are charging us late charges....This really hurts the last guy in line, who ends up having to pay all his profits for penalties and interest on supplies, loans, government payroll withholdings, benefits, etc.

Another member in Ashland, Virginia told us he had done some sheet metal work for a contractor on a HUD project over five months earlier and still had not received payment from the general contractor.

A supplier in Manassas Park, Virginia had done some work at

Dulles Airport for a general contractor. While the general contractor had been paid for seventy percent of the project, our member had received none of the money due him.

Although a part of the government payment process, these folks have no recourse under the Act to receive late payments on overdue bills.

NFIB recommends to the Committee that language be added to S. 2479 to cover the concerns of the subcontractor. We recommend that prime contractors be required to pay their subcontractors within seven days of receipt of payment from the federal government or face payment of late fees in line with those paid by the government under P.L. 97-177. Although we would not limit these provisions to construction contracts, we must note that this is standard industry procedure for such contracts in the private sector. Further we would suggest extending this requirement to the subcontractors of subcontractors, etc. Where government dollars are involved in the payment process, appropriate interest penalties should be paid by any entity that abuses the system.

Often prime contractors only channel payments from the government to the subcontractors who have actually done the work or provided the supplies. If a subcontractor is found not to have performed properly, the prime contractor should have notified him or her before certifying to the government that the work had been satisfactorily done. Seven days is a sufficient amount of time for processing a payment to the subcontractor inasmuch as all the necessary billing was submitted to the prime before billing the federal government.

While we were negligent in covering late payments for subcontractors in the original legislation, NFIB hopes that this error would be corrected in any bill that moves through the Congress which modifies the Prompt Pay Act.

By the same token, we remain concerned about excessive delays in processing payments through Medicare. The Health Insurance Financing Agency, within the Department of Health and Human Services, continues to ignore the pleas from its providers that they deserve prompt payment of their claims. Once again, this agency is really only a conduit for federal dollars designated to pay for certain goods and services. While we know there are others on today's panel who will speak specifically to the problems such suppliers encounter on a constant basis, we did want to share with you some of the situations facing our members.

A durable medical equipment dealer in Texas shared the following with us:

> The damage to suppliers like me is no mirage. In the face of reduced revenues, I need my capital that is tied up through

Medicare's bungling to replace lost business with other opportunities. I have accounts receivable of over ninety days from Medicare that is in excess of $1 million. That, along with the equipment that I have purchased in good faith is all that I own. The tie up of this money and the reduced revenues has created hardships. I have had to lay off twenty-seven employees. I have trouble paying my bills and I cannot make my installment payments to the bank. I lost a large contract because I don't have the money to purchase the equipment they need. I don't want charity. I want to be paid for the goods and services that I delivered in good faith.

In the state of Texas alone, this member reported that an excess of 600 jobs would be lost because of these practices. Two hundred and twenty-five firms could go out of business at a loss of $120 million. When we talk in terms of lost businesses, we not only talk about hundreds of lost jobs, but we talk about a smaller marketplace without the benefit of greater competition. Small business doesn't mind coping with the normal competitive forces facing any business. But small firms resent having to endure the trials associated with the government ignoring its responsibilities as a customer and not properly meeting its financial obligations.

In closing let me say that the NFIB believes the government should be held accountable for all its payments. While tremendous progress has been made in this area, we would suggest that the government needs to be more conscientious about their payment performance. Let me once again thank the Committee and Senator Trible for giving this matter their attention and for letting NFIB have this opportunity to share our views with you.

0279Z

HISTORY OF LATE PAYMENTS BY THE U.S. NAVY

Ship Name	Delivery date	Check Date	Delay in days	Dollars	Interest paid or Discount taken
L.Y.SPEAR	15 SEP 82	10 NOV 83	421 days	$4046.00	no interest paid
PUGET SOUND	20 OCT 82	17 JAN 83	89	2334.40	took $46.69 discount
PRESERVER	17 JAN 83	7 APR 83	80	3175.00	took $63.00 discount
PENSACOLA	26 JAN 83	7 APR 83	71	2798.53	took $55.00 discount
IDOLE	27 JAN 83	11 APR 83	74	5622.55	took $112.00 discount
PUGET SOUND	3 FEB 83	29 SEP 83	238	2954.50	no interest paid
L.Y.SPEAR	14 FEB 83	22 MAR 83	36	856.35	no interest paid
L.Y.SPEAR	14 FEB 83	22 MAR 83	36	3425.40	took $19.03 discount
L.Y.SPEAR	15 FEB 83	29 APR 83	73	3615.70	no interest paid
MT. WHITNEY	25 FEB 83	28 MAR 83	31	8312.21	took $166.00 discount
TEXAS	27 FEB 83	10 MAY 83	70	2716.05	took $54.30 discount
VIRGINIA	16 FEB 83	27 APR 83	70	951.50	* paid $5.36 interest
IWO JIMA	21 MAR 83	25 MAY 83	56	9763.19	took $195.00 discount
L.Y.SPEAR	30 MAR 83	3 JUN 83	65	645.90	no interest paid
DETROIT	31 MAR 83	9 AUG 83	131	1976.86	* paid $48.37 interest
L.Y.SPEAR	8 APR 83	15 JUN 83	68	2854.50	took $57.09 discount
L.Y.SPEAR	6 MAY 83	3 OCT 83	150	666.05	* paid $39.50 interest
MT. WHITNEY	26 MAY 83	13 JUL 83	47	7649.65	took $152.98 discount
GUAM	2 JUN 83	29 JUN 83	27	8298.75	took $165.00 discount
TRENTON	6 JUN 83	29 JUN 83	23	17156.42	took $343.00 discount
L.Y.SPEAR	10 JUN 83	4 AUG 83	55	5433.94	no interest paid
L.Y.SPEAR	10 JUN 83	27 JUL 83	47	4006.00	no interest paid
PUGET SOUND	16 JUN 83	8 AUG 83	53	9515.00	took $190.30 discount
L.Y.SPEAR	23 JUN 83	14 JUL 83	21	1622.72	took $32.45 discount
.Y.SPEAR	24 JUN 83	12 AUG 83	49	951.50	no interest paid
..L.PAGE	27 JUN 83	15 AUG 83	49	9878.49	took $197.00 discount
L.Y.SPEAR	28 JUN 83	29 AUG 83	62	951.50	no interest paid
TRENTON	30 JUN 83	12 AUG 83	49	4735.51	took $94.71 discount
L.Y.SPEAR	6 JUL 83	26 SEP 83	81	5433.94	no interest paid
PUGET SOUND	7 JUL 83	1 SEP 83	56	9515.00	no interest paid
L.Y.SPEAR	7 JUL 83	28 SEP 83	83	4703.40	no interest paid
L.Y.SPEAR	11 JUL 83	28 SEP 83	79	4703.80	no interest paid
L.Y.SPEAR	14 JUL 83	26 SEP 83	74	5433.94	no interest paid
L.Y.SPEAR	23 JUL 83	28 SEP 83	67	5043.00	no interest paid
L.Y.SPEAR	25 JUL 83	3 OCT 83	70	666.05	took $38.55 discount
L.Y.SPEAR	25 JUL 83	25 AUG 83	31	2433.00	took $48.66 discount
L.Y.SPEAR	26 AUG 83	17 OCT 83	52	920.00	* paid $5.58 interest
L.Y.SPEAR	28 NOV 83	2 FEB 84	66	4800.00	took $96.00 discount
L.Y.SPEAR	29 NOV 83	8 FEB 84	71	4140.00	took $82.80 discount
L.Y.SPEAR	26 NOV 83	15 FEB 84	81	1650.00	no interest paid
L.Y.SPEAR	27 DEC 83	1 MAR 84	65	4720.00	no interest paid

NOTE: At the time of this contract, our terms of payment for the government were 2%20 NET 30

* Indicates when we were paid following lengthy delays

ENCLOSURE (1)

HISTORY OF LATE PAYMENTS BY THE U.S. NAVY

Ship Name	Delivery Date	Check Date	Delay in days	Dollars	Interest Paid/Discount Taken
AMERICA	1 NOV 83	23 MAR 84	142 days	$ 1035.00	no interest paid
SILVERSIDES	16 FEB 84	6 APR 84	49	2788.10	discount $56.90 taken
NASSAU	8 FEB 84	5 APR 84	57	2340.00	paid interest $22.52
L.Y. SPEAR	24 FEB 84	16 APR 84	51	4999.41	discount taken $102.03
CORAL SEA	27 DEC 83	10 MAY 84	135	575.00	no interest paid
AMERICA	11 APR 84	16 MAY 84	35	4831.40	discount taken $98.60
CANISTEO	13 FEB 84	17 MAY 84	93	2128.37	paid interest $46.09
NIMITZ	25 OCT 83	12 JAN 84	79	920.00	no interest paid
L.Y. SPEAR	25 NOV 83	14 JAN 84	50	7820.00	no interest paid
AMERICA	31 OCT 83	28 JAN 84	89	5183.68	no interest paid
AMERICA	1 NOV 83	28 JAN 84	88	1840.00	no interest paid
NIMITZ	25 APR 84	4 JUN 84	40	3157.56	discount taken $64.44
ACADIA	16 DEC 83	1 JUN 84	168	988.32	discount taken $20.16
CORAL SEA	19 APR 84	25 JUN 84	67	5826.10	discount taken $118.90
NAB LITTLE CREEK	6 MAY 84	3 JUL 84	56	4410.00	discount taken $90.00
AMERICA	31 JAN 84	12 JUL 84	162	362.98	paid interest $17.98
AMERICA	8 JUN 84	13 JUL 84	35	1715.00	discount taken $35.00
PRAIRIE	15 NOV 83	13 JUL 84	240	1235.39	discount taken $25.21
NIMITZ	25 JUN 83	2 AUG 84	38	836.43	discount taken $17.07
SHREVEPORT	19 JUL 84	5 OCT 84	78	1495.00	no interest paid
SIERRA	17 SEP 84	15 NOV 84	59	2116.00	no interest paid
E.S. LAND	19 SEP 84	17 NOV 84	59	2517.96	paid interest $17.96
L.Y. SPEAR	17 OCT 84	3 DEC 84	47	3111.50	discount taken $63.50
L.Y. SPEAR	18 OCT 84	5 DEC 84	48	1576.90	discount taken $28.10
L.Y. SPEAR	17 OCT 84	5 DEC 84	49	2053.10	discount taken $41.90
J. DANIELS	4 OCT 84	14 DEC 84	71	580.00	no interest paid
PROTEUS	14 OCT 84	12 DEC 84	59	2857.00	no interest paid
SAIPAN	24 NOV 84	4 JAN 85	41	9130.00	discount taken $182.60
ACADIA	18 SEP 84	5 FEB 85	140	3706.17	discount taken $75.63
FULTON	19 MAR 85	12 APR 85	24	3773.00	discount taken $77.00
C.V. RICKETTS	8 FEB 85	24 APR 85	75	4899.94	paid interest $68.54
PRAIRIE	16 FEB 85	19 APR 85	62	1260.60	no interest paid
CORAL SEA	1 OCT 85	9 DEC 85	69	8740.00	no interest paid

Total Ships/Naval Establishments 30 Total Incidents 74

29 No interest
9 Paid interest
36 Took discount

Senator TRIBLE. Mr. Schaedel, I thank you for your testimony this morning, and I note again that you are representing the NFIB, National Federation of Independent Business, so you speak not only from your own experience but you speak on behalf of a very large community of interest.

Mr. SCHAEDEL. Yes, sir.

Senator TRIBLE. I know that Senator Pressler may have to return to the Commerce Committee where I should be, as well, this morning so I do not want both of us to be absent.

Senator Pressler, would you have something to add at this point?

Senator PRESSLER. Thank you, Senator Trible.

I want to commend the witnesses, and I do not want to interrupt here, but I do want to pay tribute to the committee's National Advisory Council, which on October 23, 1985, adopted the resolution regarding the implementation of the Prompt Payment Act.

I want to pay tribute to Mr. Herb Boden of South Dakota, president of Syncor, who serves on that council. Herb was recently named by the Small Business Administration of South Dakota Small Business Person of the Year.

Now the council officially noted in its deliberations that some agencies are abusing the 15-day grace period allowed for in the act by not initiating payment on contractors' invoices until the expiration of 30 days, as has been pointed out by our able witnesses. In some cases it has been alleged that Federal agencies have delayed payments to contractors by refusing formal acceptance of supplies, services, or construction, thus delaying the start of payment periods mandated by the act.

There have been instances where agencies have rejected contractors' invoices as improper after the 15 days provided in the act, thus delaying payment.

Finally, we have been told that some agencies have made payments after the date specified in the contract, but have failed to pay interest on the amount owed.

Problems such as these need to be explored, as Senator Trible is doing here today. I am hopeful that the Committee will consider most if not all of them during today's hearing. The Prompt Payment Act can benefit both the Government and the private sector by doing things right. However, in order for it to do so, Congress must ensure its original intent is carried out. If it is not in the record, and I am sure it is, I would like to submit the resolution of the National Advisory Council, of which I am very proud to say a South Dakotan serves.

Thank you very much.

Senator TRIBLE. Senator Pressler, that will be made a part of the record at this point. I thank you for being here this morning.

[The resolution referred to follows:]

RESOLUTION OF NATIONAL ADVISORY COUNCIL
ON IMPELEMENTATION OF THE PROMPT PAYMENT ACT

WHEREAS, the members of the National Advisory Council to the Senate Committee on Small Business, having considered the Federal agency implementation of the Prompt Payment Act, Public Law 97-177, during the three years since it became effective on October 1, 1982, have found that the objectives of the legislation and the intent of Congress are not being fully attained;

WHEREAS, some Federal agencies continue to make payments beyond the payment date specified in its contracts or beyond the times specified in the Act, without the payment of interest;

WHEREAS, some Federal agencies are abusing the fifteen day "grace period" provided in the Act by failing to initiate payment action on contractors' invoices until the expiration of thirty days;

WHEREAS, some Federal agencies are delaying payments to small business contractors by rejecting their invoices as "improper" after the fifteen days provided by the Act;

WHEREAS, some Federal agencies are delaying payments to small business contractors by refusing formal acceptance of supplies, services or construction so as to delay the start of the payment periods mandated by the Act, after which interest must be paid;

WHEREAS, some Federal agencies are failing to automatically pay interest due to small business contractors, rather requiring them to make a demand for payment of interest contrary to the Act's self-enforcing intent;

WHEREAS, these problems with agency implementation of the Act are placing substantial financing burdens on small business government contractors, and acting as an obstacle to small business participation in the Federal procurement market, thus denying the Government the advantages of the competition, industry, and innovation provided by many small businesses;

THEREFORE, BE IT RESOLVED THAT, the National Advisory Council to the Senate Committee on Small Business calls upon the Congress, especially the Senate and House Committees on Small Business, the Senate Governmental Affairs Committee, and the House Government Operations Committee which were instrumental in the passage of the Prompt Payment Act, to:

1. conduct oversight hearings on the implementation of the Prompt Payment Act through OMB Circular A-125, the Federal Acquisition Regulation, and the implementing regulations of individual Federal agencies; and

2. to consider modifications to the Prompt Payment Act that will address demonstrated implementational abuses by some Federal agencies and assure attainment of Congressional intent and objectives in passing the Act.

Senator TRIBLE. Mr. Lavallee, you are here today on behalf of the Small Business Legislative Council.

STATEMENT OF DENNIS LAVALLEE, DIRECTOR OF GOVERNMENT AFFAIRS, NATIONAL ASSOCIATION OF PLUMBING-HEATING-COOLING CONTRACTORS, AND CHAIRMAN, SMALL BUSINESS LEGISLATIVE COUNCIL PROCUREMENT COMMITTEE, ON BEHALF OF THE SMALL BUSINESS LEGISLATIVE COUNCIL

Mr. LAVALLEE. That is correct. On behalf of the Small Business Legislative Council, I appreciate this opportunity to testify in favor of S. 2479, your Prompt Payment Amendments of 1986.

I am Dennis Lavallee, and I am chairman of the Small Business Legislative Council's procurement committee, and therefore am testifying in lieu of John Satagaj, our president.

The SBLC is a permanent, independent coalition of 88 trade associations representing over 4 million small businesses. Our sole mission is to represent the interests of small business in national policy matters. A list of our members is attached to the testimony that was submitted for the record.

In my other life, I am also director of government affairs for the National Association of Plumbing, Heating, and Cooling Contractors, and have a statement for the record on behalf of my own association as well.

Small business has played an important role in securing passage of the original prompt-pay law, and I am here today to convey small businesses' support for your current efforts. Prior to enactment of Public Law 97-177, it was the small business owner who suffered most from the Federal bureaucracy's irresponsible payment practices. A small business did not and does not have the staff necessary to monitor closely the Government's payment process to ensure timely payment.

More importantly, the small business owner was not likely to have built a relationship with an agency necessary to cut through the paperwork and bureaucracy to expedite a payment claim mired in the process. If anything, the smaller the amount, the more likely the invoice would find its way to the bottom of the pile.

Prior to enactment of the 1982 law, a great deal of frustration had built up within the small business community over this matter. More and more small businesses were dropping the Federal Government as a potential market. For these reasons, we pursued passage of the original law.

I can tell you that we are extremely pleased with the progress made to date as a result of the law. Many agencies have taken the message of the Prompt Payment Act to heart and have demonstrated improved fiscal responsibility. However, as one might suspect, we could not anticipate all of the potential loopholes which existed in the original law. Agencies have, intentionally or unintentionally, circumvented the spirit if not the letter of the 1982 law.

Having had 3 years of experience with the law, we believe we have identified those problems which can be rectified through legislation. I will only assure you that the experiences which have been documented by this committee accurately reflect the concerns of the small business community at large.

We are particularly pleased with the recommendation to phase out the 15-day grace period which has been commented on. This 15-day grace period was a last-minute compromise engineered largely to appease the Federal bureaucracy who feel the consequences of their inability to meet widely accepted commercial payment standards.

It was our belief that agencies would use this provision to delay payments. It is our understanding, as we feared, that some agencies routinely schedule payment to coincide with the full 45-day period. There is no excuse for an inefficient or ineffective bureaucracy. To acknowledge such inefficiency by condoning payments subsequent to the 30-day period, and to permit active exploitation of the provision is unacceptable.

The fears of the opponents who asserted that the interest penalty would be an expensive proposition have proved to be unfounded. The bill to a significiant extent has worked as the deterrent it was designed to be. It is only a disappointing commentary on the process that it took such legislation to make the system work.

The annual reports since passage of the prompt pay law suggests the Government now has an outstanding record for on-time payments, but the secret is to define "on time." The real story is the creative ways an agency can beat the clock. S. 2479 brings to the surface the most persistent ways to circumvent the trigger, the determination of on time. Essentially, agencies have found ways to slow down the process further up the river before an invoice reaches the point when the clock starts ticking.

S. 2479 tightens up the definitions on the front end of the payment cycle. However, some further refinements may be needed to have the process for construction contractors start earlier, such as upon substantial completion by contractors and subcontractors on a line-item basis.

Finally, we agree with the need for clarification of the coverage of the Prompt Payment Act to progress payments. As do many others, we felt the original law covered these payments, but since it has been raised as an issue we have found the record should be set straight to avoid any further misinterpretations.

We do not believe any of the proposed changes can be opposed by anyone. They are reasonable, sound objectives, for the most part matters one would have assumed would be included within the intent of the law. We do have three recommendations which could make a good bill even better.

First, we believe the Government has an opportunity and an obligation to ensure prompt payment to suppliers and contractors by agencies and organizations using federally provided funds such as grants and loans, and to subcontractors of Federal prime contractors particularly in the construction industry. Several States have, in fact, incorporated the concept of subcontractor prompt pay within their State prompt-pay laws.

The reality of current-day construction is the subcontractors perform a substantial portion of the actual construction. Although the requirement for subcontractor prompt pay may be regarded by some as intervention into a contractual relationship between other parties, it should be recognized that the prime contractor is really only a conduit for transmittal payment from the Federal Government to those who actually do the work.

Furthermore, the Federal Government already mandates many provisions of the subcontracts, including affirmative action requirements, prevailing wages under the Davis-Bacon Act, and the standards for overtime pay under the Walsh-Healy Act.

Second, the slowdown in Medicare payments by contractors to providers must be addressed. It is estimated that by the end of this fiscal year 3.7 million Medicare claims over 30 days, many in excess of 60 to 90, will be delinquent. Especially hard hit are the independent retail pharmacists represented by one of our SBLC founding members, the National Association of Retail Druggists, who provide durable medical equipment and related home health products and services to Medicare beneficiaries.

This group of small business health care providers is keenly dependent on timely payment to ensure necessary cash-flow and was cited by Senator Chiles in June 1985 when he and 18 cosponsors introduced Senate Resolution 420 relating to the prompt payment of Medicare claims.

The Health Care Financing Agency has circumvented the intent, if not the letter, of the law. HCFA has asserted that it does not have a direct relationship with providers, and moneys under health care problems such as Medicare, as HCFA, makes payments to providers through fiscal intermediaries or contractors. We strongly disagree with the HCFA argument that when fiscal intermediaries or contractors are hired by the agency to act basically as payment offices, that HCFA is no longer required to make prompt payment. We support an amendment to S. 2479 to clarify the current Public Law 97-177 coverage.

Third, despite our efforts to pin down responsibility for payment within an agency, it is often difficult to ascertain who has the authority to expedite a claim which is mired in the bureaucratic morass. It may be worthwhile to give some thought to a payment ombudsman to serve as an expediter in the process, provided the position is not used by the Agency to delay payment further. At a minimum, agencies should be required to identify clearly the individual with ultimate responsibility for payment clearance.

In conclusion, we heartily support your S. 2479 as an important step, and we will extend our fullest cooperation to this committee and the other sponsors of the bill to obtain passage in the 99th Congress. Thank you.

[The prepared statements of Mr. Lavallee and Mr. Satagaj follow:]

National Association of Plumbing-Heating-Cooling Contractors
Pride In Our Past—Faith In Our Future

Statement by
Dennis Lavallee
Director of Government Affairs

Naitional Association of Plumbing-Heating-Cooling Contractors

to the
Committee on Small Business
United States Senate

on
Oversight of the Prompt Pay Act
and S. 2479, Prompt Payment Amendments of 1986

June 19, 1986

180 S. Washington Street, P.O. Box 6808, Falls Church, VA 22046 • 703/237-8100

My name is Dennis Lavallee and I am Director of Government Affairs for the National Association of Plumbing-Heating-Cooling Contractors (NAPHCC).

The NAPHCC is the oldest national association in the construction industry and the largest in the plumbing-heating-cooling industry. It has over 6000 members. Membership comes from every state in the country and is organized through about 300 state and local affiliated associations. This industry employs over 450,000 people and has receipts of over 21 billion dollars.

We thank you for scheduling these hearings to look into the implementation of the Prompt Pay Act and to look into changes that may be necessary such as those proposed by Sen. Trible in S. 2479.

We have continued to be concerned with the way in which the federal government pays its bills. Thus, we were actively involved in efforts of the Prompt Pay Coalition which resulted in passage of the Prompt Pay Act of 1982.

While that legislation solved many problems with payment by requiring the federal government to pay its bills on time or pay interest, there are a number of improvements which are needed to insure that the intent of the act is not thwarted and to broaden the use of the policy of the prompt payment.

S. 2479 corrects several of the deficiencies. However, it is imperative that you expand the policy to insure that payments flow promptly through the system. There are many companies who provide the goods and services which enable prime contractors, grantees, and loan recipients, etc. to fulfill their obligations with the federal government. Just as small business cash flow and economic survival can be critically injured by slow pay in direct relationships with the government, so also can they be hurt when they provide goods and service through itermediaries.

Thus, we have several specific recommendations for improvment of the Prompt Pay Act.

1. Flow through payments and interest to subcontractors.

In surveys of members of NAPHCC who perform work for the federal government, it is not unusual to find payment delays in excess of the 30 to 45 day cycle which is customary in the construction industry. Many of these payments past through intermediaries. While this may contribute to some minimal delay, the record of longer delays indicates more severe problems with payments being delayed in the process.

If the federal government has delayed the payment, then the Prompt Pay Act applies and interest penalties are due. This interest should be passed on to the subcontractor who did the work. If the prime contractor has delayed payment, he should be liable for interest. It is in the best interest of the federal government to have prime contractors pay their subcontractors promptly to avoid delays on the project and promote timely completion. Federal policy requiring both prompt payment and interest on late payments will encourage quick completion and fair treatment to all participants in the project.

2. Prompt payment on federally assisted work.

Frequently, delays in payment are reported on federally assisted work performed through grants, loans, and loan guarantees. Similar to the flow through of payments from primes to subs, the federally assisted route should also encourage quick payment to those who perform the work.

When contractors complete their work, or a portion of it, they certify its completion and request payment. While certainly inspection of the job may be necessary to assure that the certification is accurate, it should be done promptly. There should be no excuses for tieing up payment in the bureacracy.

Just as there were prior to enactment of the Prompt Pay Act, there will be cries that the process can't work that quickly and that interest penalties will hamper the work of those receiving federal assistance. However, with the force of the law requiring prompt payment or interest payments on late payments, federal agencies were able to comply far more effectively than their dire predictions. We believe that payments through federally assisted programs can likewise be jarred to greater efficiency, when there is a legal incentive.

All too frequently, NAPHCC members on federally asisted jobs are told by federal agencies such as HUD, that the agency has no control and cannot dictate the terms of a contract (see letter from HUD - Attachment A). However, there is a list of terms and conditions which the federal government dictates on federal or federally assisted work for both prime and subcontractors. Contractors are required to comply with affirmative action requirements for the employment of minorities, women and disadvantaged. The privity of contract between contractors and employees is violated when contractors are required to pay prevailing wages under the Davis-Bacon Act. A share of subcontracts must be set-aside for contracting with business enterprises owned by the disadvantaged. The Walsh-Healy Act prescribes when employees are entitled to overtime pay.

Thus, the federal government has already intervened in the relationsip that contractors must have with subcontractors and their work force. Surely, if it's sound public policy to mandate these terms and conditions, it is also sound public policy to require that contractors be paid promptly so that they have the cash flow to comply.

3. Prompt payment of progress payments

When the Prompt Payment Act was passed, the construction industry concluded from the language and legislative history that the requirement that the government pay its bills on time or pay interest would apply to construction work. Construction projects frequently require contracts that extend over many months under which progress payments are made for construction work completed.

Until recently, in narrow interpretations of the Act, federal agencies had determined that progress payments were for financing purposes rather than for work completed. In so doing, they had excluded the construction industry form coverage by the Prompt Payment Act because the Act does not cover payments for financing purposes. A recent OMB change makes partial payments for work completed eligible under the Prompt Payment Act. This has provided some relief for many construction payments. However, there still appear to be discrepancies in federal agencies over whether the act applies to progress payments.

Moreover, contracts financed with federal funds, such as grants and loans still produce late payments to small businesses. Frequently, we have been receiving reports of late payment of progress payments by construction industry contractors. This problem is further complicated because payment must first be made to the prime contractor who then uses the proceeds to pay subcontractors, and they in turn their second tier subcontractors, etc. It is not unusual for some subcontractors to receive payments months after work has been completed.

The Prompt Payment Act was intended to assist small businesses in getting timely payment from the government so that they could maintain themselves as viable economic entities with the ability to compete in the marketplace. The complete beneficial effect cannot be felt until the same principles for fair treatment are extended to projects supported by the federal government.

4. Final payment

Final payments on construction work continue to experience major delays. Frequently, these are larger payments incorporating retainage that may have been withheld through the course of the job. It is not unusual for a contractor to have completed a job and see the project in use while the contractor continues to wait for final payment.

Attachment B is but one example of work completed by a subcontractor waiting more than a year for payment. Following discussion at the Construction Industry Legislative Conference, he sent complete details to Senator Trible to document the example.

Final payments, including retainage, should be paid promptly and on a line item basis to subcontractors upon substantial completion of their work. This involves redefining the starting point of construction completion from which interest will accrue. Where sums have been retained for punch list items, the amount retained should be no more than the value of the punch list items and then released when the items have been completed.

If final payment is not immediately forthcoming to the contractor or subcontractor for work substantially completed, funds due to the contractor should be placed in an interest earning escrow account to be released as soon as practical.

Conclusion:

As plumbing-heating-cooling contractors, our members must commit for materials and provide labor on jobs, sometimes long before we are paid for them. Obviously, this can create a significant cash flow problem. That problem is compounded further if bills are not paid within a reasonable period of time, e.g. 30 days.

We are indeed pleased that the Congress is reexamining the Prompt Pay Act. We thank Sen. Trible and his colleagues for sponsoring S. 2479. It is an important first step to addressing continued problems with small businesses getting paid promptly.

However, as the bill goes through the legislative process, we urge you to incorporate recommendations for

* flow through of payments and interest to subcontractors
* prompt payment on federally assisted work
* prompt payment on progress payments
* defining the start date for final payment

Again, thank you for providing this opportunity to testify. I would be happy to answer any questions.

2626G

DL:ld

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-8000

OFFICE OF THE ASSISTANT SECRETARY FOR
HOUSING-FEDERAL HOUSING COMMISSIONER

Attachment A

MAY 1 5

[illegible] 21 [illegible] CO

Mr. Dennis Lavellee, CAE
Director of Government Affairs
National Association of Plumbing,
Heating-Cooling Contractors
180 S. Washington Street
Falls Church, VA 22046

Dear Mr. Lavellee:

This is in response to your January 20, 1986 letter to Silvio J. DeBartolomeis, former Deputy Assistant Secretary for Multifamily Housing Programs, concerning the retainage of a percentage of construction progress payments and prompt payment of vouchers.

We assume that the situations you describe are not occurring under direct HUD contracts. The Federal Acquisition Regulation (FAR) provides for a flexible policy regarding the 10 percent withholding of construction progress payment and we encourage our contracting officers to recognize satisfactory performance and permit the waiver of any payment withholding on a case-by-case basis.

HUD's contracting officers are also expected to be very sensitive to the requirements of the Prompt Payment Act. Late payments are sometimes made, but they are closely monitored. As for payments of penalties associated with the 10 percent progress payment withholding, penalties could only be paid for properly billed amounts covering acceptable, completed work. The Prompt Payment Act is not applicable to subcontractors; therefore, unless the FAR is legislatively changed, the prompt payment provisions do not "flow thru" to subcontractors.

Provisions applicable to retainage of progress payment and prompt payments during, and upon completion of, construction differ when HUD is the mortgage insurer or lender in lieu of the contracting agent.

On projects receiving insurance of construction advances and projects with direct loans from HUD, Federal Regulations require a 10 percent retainage from construction progress payments. This retainage is normally held until construction is complete and the general contractor and mortgagor complete their cost certifications and take other necessary steps to permit final endorsement. When the general contractor's performance warrants, HUD Field Office Managers may release 50 percent of the holdback provided that construction has reached 90 percent completion. An authorization of additional releases can be obtained with the written consent of the surety and the Office Manager's assurance that failure to do so would probably result in a default of the construction loan.

HUD Field Offices are expected to place priorities on processing contractor's requisitions. These funds are released by the mortgagee to the mortgagor in projects involving mortgage insurance and by HUD through the Treasury Department to a depository and then to the Borrower in Section 202 projects for payments to general contractors and for other related costs. The Department relies on certifications by the mortgagor and general contractor that appropriate employees have been paid.

None of the terms of the contract negotiated between a subcontractor and general contractor are dictated by HUD. It is incumbent upon the subcontractor to protect itself in the event it does not receive its payments in accordance with the terms of its contract. Although we cannot assume the role of protector of subcontractors, where there is evidence of continued slow payment or nonpayment of subcontractors such that the mortgage security is jeopardized, we will work with the parties to attempt to resolve problems. Subcontractors always have the option of requesting relief from the mortgagee or bonding company.

There are provisions for payment to contractors for building components stored offsite; however, prior approval by the Department is required. The law was changed to permit progress payments to be made for building components stored offsite in recognition of the savings that often result from the timing of the purchase and storage of major building components offsite. Building materials common to the various trades are expected to be stored on-site. Contractors and subcontractors may elect to purchase materials and store them offsite, but HUD will not approve progress payments for such materials until they are brought on-site or actually installed in the project.

We trust that your other concerns were associated with isolated cases. The absence of an employee from a HUD Field Office should not interrupt the flow or progress of the work. HUD's mortgage credit personnel are instructed that tap fees and other fees, when applicable, are approved when actually due and payable and supportable by billings.

I hope this information is satisfactory to you.

Very sincerely yours,

R. Hunter Cushing
Deputy Assistant Secretary for
Multifamily Housing Programs

Attachment B

WATCO CORPORATION
MECHANICAL CONTRACTORS

NATIONAL ASSOCIATION OF
PHCC
PLUMBING-HEATING-COOLING
CONTRACTORS

HVAC-Sheetmetal
Metal Fabrication
Industrial Piping
Process Piping
Ultra Pure Piping

May 13, 1986

Honorable Paul S. Trible, Jr.
U. S. Senate
Washington, D.C. 20510

Dear Senator Trible:

It was an exciting and most delightful experience to have talked with you while in Washington at the Legislative Conference on Tuesday, 22nd of April. I sincerely appreciate your invitation to send to you documentations on actual projects where prompt payment to subcontractors is involved at this very time.

Our people, from the floor, tried to impress upon you that your bill only required the owner or the government agency to promptly pay the contractor, which in your bill is the general contractor. We, the subcontractors, who perform over eighty (80%) percent of the actual work on these jobs, stand to wait many months and even years after their phase of work is completed before being paid.

Your bill should at least say pay all CONTRACTOR or each SUBCONTRACTOR his just payment. I spoke with you about making "LINE ITEM PAYMENT" being included in your bill and you stated you wanted some documented evidence as to what I was talking about on the subject.

Sir, I have attached a project that is now still ongoing that I would appreciate your review and study thereof in respect as to WATCO CORPORATION having completed their phase of work satisfactorily well over a year ago and we still have not been paid.

Can't you see by these documents that as long as the General Contractor does not complete his omissions and deletions, he does not have to pay his subcontractors. Your bill is of little value to the mass or volume of the REAL people who ACTUALLY do the work on the projects.

You spoke about taking one step at a time with your bill and having the general contractor paid promptly. You said that once we got the general contractor paid promptly we could then work on getting a pass through to the subcontractors who do the majority of the work. Just how long do you think many of the small subcontractors could hold out with several jobs with the federal government at ten thousand ($10,000.00) plus on each job for years before being paid?

How long do you think you could hold out if you were not paid by line item or each job that you performed for your client?

If you have any need or think that I can be of service to you or your committee to help you or your colleagues understand LINE ITEM PAYMENT or prompt payment to the subcontractor, I will be more than happy - upon invitation - to come to Washington and talk to you about this subject.

Most respectfully,

WATCO CORPORATION

John Ward

John A. Ward, Jr.
Chairman of the Board

JAW/cls

Enclosure

WATCO CORPORATION
MECHANICAL CONTRACTORS

May 14, 1986

Log of Project:
Contract No.: DACA21-83-C-0111
Prime Contractor: BaHeast Construction Co. Inc.
Title of Project: E.M. Barracks
Location: Fort Bragg, N.C.
Bonding Company: United States Fidelity Guaranty Co.
Name and Address: 456 N. Meridian Street
Indianapolis, Ind. 46204

Contract Status

Issued: 29 Dec 1983
Signed: 4 Jan 1984
Returned: 12 Jan 1984
Completed: 10 Apr 1985

SUMMARY: As of this date, 14 May 1986, WATCO CORPORATION has satisfactorily completed their phase of work on this project and billed final on 10 April 1985, some thirteen months ago. Why should any subcontractor have to be subjected to this type of system at no interest? This is a prime example of why we need LINE ITEM PAYMENT on all projects.

WATCO CORPORATION
P.O. BOX 33716 RALEIGH, NORTH CAROLINA 27611 (919) 772-7191

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STATEMENT BY
JOHN S. SATAGAJ, PRESIDENT SMALL BUSINESS LEGISLATIVE COUNCIL
BEFORE THE
SENATE SMALL BUSINESS COMMITTEE
JUNE 19, 1986

On behalf of the Small Business Legislative Council (SBLC), I appreciate the opportunity to testify today in favor of S.2479, the "Prompt Payment Amendments of 1986."

My name is John S. Satagaj and I serve as President of SBLC. The Small Business Legislative Council is a permanent independent coalition of eighty-eight trade associations representing over four million small businesses. Our sole mission is to represent the interests of small business in national policy matters. A list of our members is attached.

Small business played an important role in securing passage of the original prompt pay law and I am here today to convey small business' support for your current efforts. Prior to enactment of P.L. 97-177, it was the small business owner who suffered most from the Federal bureaucracy's irresponsible payment practices.

A small business did not and does not have the staff necessary to monitor closely the government's payment process to ensure timely payment. More importantly, the small business owner was not likely to have built the relationship with an agency necessary to cut through the paperwork and

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bureaucracy to expedite a payment claim mired in the process. The agency had no incentive to process a claim. If anything, the smaller the amount, the more likely the invoice would find its way to the bottom of the pile. Prior to enactment of the 1982 law, a great deal of frustration had built up within the small business community over this matter. More and more small businesses were dropping the Federal government as a potential market. Many small business owners would tell you that the company had invested much time and effort up front to secure government business only to discover the government was an unreliable customer. Ageing receivables are the bane of a small business's existence as they strike at the lifeline of small business—cash flow. For these reasons, we pursued passage of the original law.

I can tell you that we are extremely pleased with the progress made to date as a result of the law. Many agencies have taken the message of the Prompt Pay Act to heart and have demonstrated improved fiscal responsibility.

However, as one might suspect, we could not anticipate all of the potential loopholes which existed in the original law. Agencies have, intentionally or unintentionally, circumvented the spirit, if not the letter of the 1982 law. Having had three years experience with the law, we believe we have identified those problems which can be rectified through legislation. It is not my intention to sing a litany of individual stories of woe. This Committee has held hearings on this subject and has compiled an excellent record. I will only assure you that the experiences which have been documented by this Committee accurately reflect the concerns of the small business community at large.

We are particularly pleased with the recommendation to phase out the 15 day grace period beyond the 30 day payment period given to agencies under P.L. 97-177. This 15 day grace period was a last minute compromise, engineered largely to appease the Federal bureaucracy who feared the consequences of their inability to meet widely accepted commercial payment standards. We found such a requirement to be preposterous then and do now. It was our belief agencies would use this provision to delay payments. Such a "courtesy" would never be permitted in the private sector and should not be given to the government. Many of the government's functions are essentially commercial functions and should be treated as such. It is our understanding, as we feared, some agencies routinely schedule payment to coincide with the full forty five day period.

There is no excuse for an inefficient and ineffective bureaucracy. To acknowledge such inefficiency by condoning payments subsequent to the 30 day period and to permit active exploitation of the provision is unacceptable. Certainly with three years behind them, agencies should be ready to follow the rules by which the rest of us must play.

The fears of those opponents who asserted that the interest penalty would be an expensive proposition, have been proven to be unfounded. The bill, to a significant extent, has worked as the deterrent it was designed to be—it is only a disappointing commentary on the process that it took such legislation to make the system work. We are constantly amazed by the need to enact laws such as the Prompt Pay Act, Equal Access to Justice Act, Regulatory Flexibility Act, and the Small Business Innovation Development Act, for the sole purpose of forcing the Federal government to do what it should do instinctively, given the importance of small business to our economy and society.

The annual reports since passage of the Prompt Pay law suggest the government now has an outstanding record for on-time payments but the secret is to define on-time and the real story is the creative ways an agency can beat the clock. S.2479 brings to the surface the most persistent ways to circumvent the trigger—the determination of "on-time". Essentially, agencies have found ways to slow down the process further up the river before an invoice reaches the point when the clock begins. S.2479 tightens up the definitions on the front end of the payment cycle.

Finally, we agree with the need for clarification of the coverage of the Prompt Pay Act to progress payments. As do many others, we felt the original law covered these payments, but since it has been raised as an issue, we feel the record should be set straight to avoid any further misinterpretations.

We do not believe any of the proposed changes can be opposed by anyone. They are reasonable, sound objectives; for the most part, matters one would have assumed would be included within the intent of the law. However, in the procurement world, technicalities make the difference and intent can be subverted through unwieldy procedures. Therefore, we are here today to urge this Committee to put its full support behind this legislation and to assure you that small business considers this to be a significant initiative.

We have three recommendations which could make a good bill even better.

First, we believe the government has an opportunity and obligation to ensure prompt payment to suppliers and contracts by agencies and organizations using federally provided funds (e.g. grants, loans) and to subcontractors of federal prime contractors particularly in the construction industry. Several states have, in fact, incorporated the concept of subcontractor prompt pay within their state prompt pay laws.

The reality of current day construction is that subcontractors perform a substantial portion of the actual construction. Although the requirement for subcontractor prompt pay may be regarded by some as intervention into a contractual relationship between other parties, it should be recognized that the prime contractor is only a conduit for transmittal of payment from the Federal government to those who have actually performed the work or supplied the material. We believe it is quite appropriate for the Federal government to take action in such circumstances. Certainly, SBLC members such as the American Subcontractors Association, the National Plumbing-Heating-Cooling Contractors and the National Electrical Contractor Association can document the need for such an amendment.

Second, the slow down in Medicare payments by contractors to providers must be addressed. It is estimated that by the end of this fiscal year, 3.7 million Medicare claims over 30 days—many in excess of 60 to 90—will be delinquent. Especially hard hit are the independent retail pharmacists represented by SBLC founding member, the National Association of Retail

Druggists, who provide durable medical equipment and related home health products and services to Medicare beneficiaries. This group of small business health care providers, keenly dependent on timely payment to ensure necessary cash flow, was cited by Senator Chiles on June 4, 1985, when he and 18 cosponsors introduced Sen. Res. 420 relating to the prompt payment of Medicare claims.

The Health Care Finance Agency (HCFA) has circumvented the intent, if not the letter, of the law. HCFA has asserted that it does not have a direct relationship with providers and monies under health care programs such as Medicare as HCFA makes payments to providers through fiscal intermediaries or contractors. We strongly disagree with the HCFA argument that when fiscal intermediaries or contractors are hired by the agency to act basically as payment offices, that HCFA is no longer required to make prompt payment, and support an amendment to S.2479 to clarify current P.L. 97-177 coverage of such situations.

Third, despite our efforts to pin down responsibility for payment within an agency, it is often difficult to ascertain who has the authority to expedite a claim which is mired in a bureaucratic morass. It may be worthwhile to give some thought to a payment "ombudsman" to serve as an expediter in the process, provided the position is not used by the agency to delay payment further. At a minimum, agencies should be required to identify clearly the individual with ultimate responsibility for payment clearance.

In conclusion, we heartily support S.2479 and we will extend our fullest cooperation to this Committee and the sponsors of the bill to obtain passage in the 99th Congress. Thank you.

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Members of the Small Business Legislative Council

Alliance of Independent Store Owners and Professionals
American Association of MESBICs
American Association of Nurserymen
American Consulting Engineers Council
American Dental Trade Association
American Subcontractors Association
American Textile Machinery Association
American Trucking Associations, Inc.
Architectural Precast Association
Associated Equipment Distributors
Association of Independent Corrugated Converters
Association of Physical Fitness Centers
Association of Small Business Development Centers
Association of Small Research, Engineering and Technical Service Companies
Automotive Service Councils, Inc.
Automotive Warehouse Distributors Association
Building Service Contractors Association International
Business Advertising Council
Chicago Gift Show Inc.
Christian Booksellers Association
Direct Selling Association
Electronic Representatives Association
Florists' Transworld Delivery Association
Furniture Rental Association of America
Helicopter Association International
Independent Bakers Association
Independent Bankers Association of America
Independent Insurance Agents of America, Inc.
Independent Sewing Machine Dealers Association
Institute of Certified Business Counselors
International Bottled Water Association
International Communications Industries Association
International Franchise Association
International Reciprocal Trade Association

-more-

Jewelers of America
Latin American Manufacturers Association
Machinery Dealers National Association
Manufacturers Agents National Association
Marking Device Association
Menswear Retailers of America
National Association for the Self-Employed
National Association of Aircraft and Communication Suppliers
National Association of Brick Distributors
National Association of Catalog Showroom Merchandisers
National Association of Chemical Distributors
National Association of Development Companies
National Association of Home Builders
National Association of Manufacturing Opticians
National Association of Minority Contractors
National Association of Plumbing-Heating-Cooling Contractors
National Association of Realtors
National Association of Retail Druggists
National Association of Small Business Investment Companies
National Association of the Remodeling Industry
National Association of Truck Stop Operators
National Association of Women Business Owners
National Candy Wholesalers Association
National Council for Industrial Innovation
National Electrical Contractors Association
National Fastener Distributors Association
National Grocers Association
National Independent Dairy-Foods Association
National Moving and Storage Association
National Office Products Association
National Parking Association
National Precast Concrete Association
National Shoe Retailers Association
National Small Business Association
National Society of Public Accountants
National Tire Dealers & Retreaders Association
National Tooling and Machining Association
National Tour Association
National Wine Distributors Association
Opticians Association of America
Petroleum Marketers Association
Power and Communications Contractors Association
Retail Floorcovering Institute
Retail Tobacco Dealers of America
Small Business Council of America, Inc.
Smaller Manufacturers Council
Society of American Florists
Specialty Advertising Association International
United Bus Owners of America
Urethane Foam Contractors Association
Web Sling Association

Senator **Trible**. Mr. Lavallee, I thank you for your testimony.

At this time I would like to call on my distinguished colleague from Arkansas, the ranking Democratic member of the committee, Senator Bumpers.

STATEMENT OF HON. DALE BUMPERS, A U.S. SENATOR FROM THE STATE OF ARKANSAS

Senator **Bumpers**. Mr. Chairman, I thank you very much for giving me this opportunity to insert my opening statement for the record. I ask unanimous consent that it be admitted to the record.

Senator **Trible**. Without objection, it is so ordered.

Senator **Bumpers**. Second, I just want to say that this is a matter that some of us have been deeply concerned about for many years. My first brush with it was when I found out the poultry people in my State—and of course that is the biggest business in my State—were being severely discriminated against because the prompt-payment bill applied to red meats but not to poultry, for some strange reason. That is when I first got involved in it.

Second, I really got involved in it as a child because my father was a small-town businessman and he judged everybody not only on whether they paid their bills or not, but how promptly they paid them. So I grew up in that kind of an environment. Some of the things the Government has done through the years through their surrogates who handle these agencies is to punish especially small business people by late payments.

I spoke to the national association—actually I spoke to the Arkansas Pharmacists Association, which is a branch of the NAD, at their annual banquet in Little Rock just a couple of weeks ago, and I am telling you, all they wanted to talk about was how those who were in the equipment rental business were going broke. One fellow told me that his cash-flow was at zero, and that he was either going to have to close his doors, or go borrow money that the Government owned him, $100,000 for equipment rentals, and the most current invoice was something like 3 months old. Some of it went as long as 9 months. Small business people who depend on cash-flow just cannot operate.

Some of us have cosponsored a very strong resolution over in the Senate to require HCFA to explain to us why they have taken these inordinate amounts of time. My daughter had a little old thing removed from her face, incidentally, about 6 months ago and I do not think they have ever even acknowledged the claim yet. But these small business people, who are depending on Medicare and Medicaid payments, are having a very tough time keeping their doors open because of the lateness of this.

They are not subject to the interest payment, as I understand it. They are not subject to the interest payment that other people are. And of course there is not any question but that the grace period is being terribly abused. So I am really pleased that we are holding this hearing this morning in response to the bill that Senator Weicker, and Senator Trible, and I have introduced, and I promise you we will vigorously push the passage of that legislation.

I want to thank all of you. I have a couple of other hearings that I am going to have to rush to, but I appreciate your time and your interest in this item, and Senator Trible and I both pledge to you we will do everything we possibly can to expedite this.

Senator TRIBLE. I thank you for being here this morning, Senator Bumpers.

Senator BUMPERS. Thank you, Mr. Chairman.

Senator TRIBLE. And for your leadership.

[The prepared statement of Senator Bumpers follows:]

June 19, 1986

Statement by Senator Dale Bumpers

The Prompt Pay Amendments of 1986

Small Business Committee

Chairman Weicker, I want to commend you for taking the initiative to convene this hearing today on implementation of the Prompt Pay Act of 1982--or perhaps I should say the lack of implementation, since we are focusing on problems. This hearing could hardly be more timely, since it allows us to examine problems which Senator Trible identified in a previous field hearing and with which we are all familiar through constituent casework and complaints, and also lets the Committee examine the legislation which the Chairman, Senator Trible and I, along with others, introduced just a few weeks ago as S. 2749, the Prompt Pay Amendments of 1986. The government's failure to meet its obligations poses especially serious problems for small business. In addition to the strict bounds of this Act, I am particularly interested in the testimony we will receive from health care providers and suppliers under the Medicare program. This program is not now covered by the Prompt Pay Act, but is experiencing inordinate difficulties in meeting its financial obligations in a timely and responsible manner.

The Prompt Pay Act, P.L. 97-177, is premised on the moral imperative that Uncle Sam should pay his bills on time, or at least reasonably on time. As a general rule, the law allows a federal agency 30 days after receipt of a "proper invoice", or the date on which the agency "accepts" the property or service in question, whichever is later. Perishable agricultural commodities, meat and meat-products are treated in accordance with strict industry payment standards, with ten days from delivery for the former and seven days from delivery for the latter. If timely payments are not made in accordance with these specific time schedules, then the agency is required to automatically pay the contractor interest on the late payment. However, the Act provides that the interest penalty does not attach if payment is made within the "grace period" specified: three days for meat and meat products, five days for perishable agricultural commodities, and 15 days for all other supplies, services or construction. The grace periods were to be a cushion for the agencies to avoid many small interest penalties, while they revised their payment procedures to meet the Act's requirements.

There is no doubt that the Prompt Pay Act has dramatically improved the bill-paying performance of federal agencies across the board, and that small business has benefited from the legislation. Despite Congress' best intentions, however, there still exist a disturbing number and range of problems with the government's bill-paying practices. Both study by the Committee staff and our own experience in listening to problems of our small business constituents suggest that some agencies are making payments beyond the times specified by the Act, given the almost universal absence of payment terms in individual contracts. Further, they too often avoid the payment of interest required by the Act. Contractors who inquire concerning the non-payment of interest for a late payment are often told that the contractor is required to make a written demand for the interest in order for the agency to pay the interest. Finally, there seems to be a disturbing pattern of agencies paying their invoices late in the 15-day "grace period", abusing the Congressional intent embodied in the Act in order the improve federal cash flow.

The bill that Senator Weicker, Senator Trible and I introduced, S. 2479, will go a long way toward rectifying these problems and putting government bill-paying on a more business-like basis. In my own view our legislation will make several crucial changes in the Act. First, under this legislation a proper invoice will be deemed to have been received on either the actual date of receipt or five days after delivery, whichever is later, unless the contract specifies otherwise. This change is much more consistent with business and commercial practices and, frankly, with legal common sense as embodied in the Uniform Commercial Code which generally provides that acceptance occurs on delivery.

There is no justification for leaving the small business supplier hanging by his or her thumbs, financially speaking, while some bureaucrat decides whether the goods should be accepted. I have always argued that government can and should be run like a business, and this is a perfect example of putting that slogan into action. Second, we shorten the grace period from 15 days to 8 days, after which interest payments are obligatory. Third, this bill provides that if a business entitled to an interest payment under the Act does not receive the payment automatically as required by law, but has to make a written request for such interest, the payment is automatically doubled. There is certainly no justification for withholding an interest payment, to which a small business person is legally entitled, just so that an agency can stay in the good graces of the Office of Management and Budget. Finally, the bill directs that OMB amend the Federal Acquisition Regulation (FAR) to grant authority to agencies to specify payment terms in procurement contracts.

For a number of months now, I have been hearing more than the usual number of complaints from health care providers and suppliers under the Medicare program. The complaints have become so numerous and forceful that I have concluded a serious problem exists in the Health Care Financing Administration's operations. Recently, top officials from HCFA were kind enough to meet with my staff and the staffs of Senators Weicker and Trible, and I am satisfied that good faith efforts are being made to address HCFA's extraordinary back-up of claims. The problem, however, still exists.

United Medical Rental is but one example of the magnitude of delays in both dollars and months. Mr. Randall Caldwell, who operates ten United Medical Rental Stores in Arkansas and Mississippi, has reported that since January his company has had to borrow $390,000 to meet the payroll and expenses. He says that he now has outstanding claims against HFCA amounting to $545,000. Many of these claims are more than 30 days old and some are more than 90 days old. Mr. Caldwell concedes that there has been substantial improvement in HFCA's claims-paying practices in the last three weeks. If HCFA is able to implement the recently announced 27-day turn-around for "clean claims", which should amount to some 70% of all claims, then Mr. Caldwell and companies like his will probably survive. If not, he and others are in serious jeopardy, even including some hospitals in Arkansas. It does seem to me, however, that HCFA could and should devise some method for acknowledging all claims, especially those which are not likely to be paid within the 27-day period, so that the supplier or provider is not left with the feeling that his claim has been drawn into a black hole. I look forward to hearing the testimony today of both Mr. Louis Hays, Associate Administrator for Operations of HCFA, and also the comments of Mr. John Lordan, who is Deputy Associate Administrator for Financial Management at OMB.

Senator **Trible**. Mr. Davis, we will call on you next. Mr. Davis is the vice president of ASC Office Furniture in Alexandria, VA.

I note a good representation of Virginians today. [Laughter.]

STATEMENT OF DAVID P. DAVIS, VICE PRESIDENT, ASC OFFICE FURNITURE, ALEXANDRIA, VA

Mr. **Davis**. Yes, sir. We thank you for inviting us.

We are one of the small businesses that are being hurt by the Government not paying their bills on time. We mail approximately 2,000 invoices a year to Government agencies. They are mostly very small invoices.

I would just like to summarize the major problems that we have had in collections with various Government agencies. No matter what problem there is, we have run into it over the past few years. We have heard every excuse there has been. We still have invoices pending that are 15 months overdue for no apparent reason. In our testimony we have listed a few examples of attempts we have made, and we still have not gotten payment.

Some of the other problems we are having is this 15-day grace period. We cannot see any need for it. It is being abused on almost every payment we receive. Very few payments are received within the 30-day timeframe. I would estimate that less than 10 percent of our payments from Government agencies are received within 30 days.

One of the other problems—our biggest problem—is receiving reports. We do business all over the country, and most of our collection time is spent tracking down where the receiving reports are and why they are not filed. A good example of this is, unfortunately, right here in Alexandria, VA, on receiving reports.

We were told by finance that we could not get paid until that receiving report was filed. So we went to the receiving office. They said they filed it; 2 months later, we were still going back and forth trying to find it, and nobody would lift a finger to help us find that receiving report.

Finally, we ended up going to the commanding officer, and still a month later we finally got action on it. We were paid a month after that. So the receiving report has been our biggest problem over the years, and it must be done the way your prepared reforms to the act states, within that 5 days, or we could possibly stop doing business with the Government completely on the basis of nonprofitability. We just are not doing well at all.

Another major problem that we are having is lost or never received invoices. This problem has come up a lot more since the passing of the original Prompt Payment Act. We can send an invoice out certified mail, get a receipt, and we still find that they say they have never received it, and if we want to get paid we must resubmit and the timeframe for payment starts over, which brings us to the next point.

When does the 30-day clock start? We must fine tune this as your reforms suggest.

One of our other problems is that most of our contracts—we hold 25 multiple-award contracts as do many of the other dealers in the area—are what is called FOB-origin, meaning the Government accepts the merchandise when a carrier picks it up at the factory. Most agencies do not accept that as a starting date. The date the receiving report is filed becomes the date the agencies actually start their 30 days no matter when we get our invoice to them. Even though they do not need a receiving report on many of our orders, the 30 days does not start until the receiving report is filed. So we need a clearer definition there.

Finally, another major problem is we are finding that a lot of the finance offices and procurement offices really do not know what they are doing. They are not kept up-to-date with the FAR's.

Senator **Trible**. I am not sure there is a legislative solution to that problem, Mr. Davis. [Laughter.]

Mr. **Davis**. Well, our solution is a little better training program within the finance area.

I think another solution to our problem would be assigning a contact as a last resort, when an invoice is overdue for several months, we need a person whom we can call and say, this is our problem, this is why the problem is there, how do we get it fixed. That probably takes up more time for ASC and the Government than anything else.

Finally, the final solution to our problems is to pass the amendment that you have proposed here. I think that will solve a majority of our problems. Thank you.

Senator **Trible**. Mr. Davis, I thank you very much for your real-role testimony. I think the more and more you hear, the more you recognize that there are substantial problems that remain, and hopefully we are headed in the right direction here in this legislation.

[The prepared statement of Mr. Davis follows:]

ASC OFFICE FURNITURE

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OFFICE FURNITURE
CONTRACT SALES

STATEMENT BY
DAVID P. DAVIS
VICE PRESIDENT
ASC OFFICE FURNITURE
5641-L GENERAL WASHINGTON DRIVE
ALEXANDRIA, VIRGINIA 22312

BEFORE THE
SENATE SMALL BUSINESS COMMITTEE
HEARING OF JUNE 19, 1986 CONCERNING
PROMPT PAYMENT AMENDMENTS OF 1986

I represent ASC Office Furniture, located in Alexandria Virginia. We are in our 9th year of business and currently hold over 25 GSA Multiple Award Contracts for office furniture and accessories. Our average annual volume with the government is in excess of $3,000,000. ASC sends approximately 2000 invoices to the Government a year and most of the 2000 invoices are for dollar amounts under $1500.00.

We appreciate your continued efforts to improve the Prompt Payment Act and we would like to thank you for giving us the opportunity to discuss our experiences in collecting delinquent government contract accounts.

Some of the problems ASC has experienced with collecting on the delinquent accounts are outlined below.

Individual agencies tend to interpret the currently allowed "15 day grace period" according to how it best benefits their agency. Certain agencies use the date the accounting and finance office receives the "receiving report" as the beginning of the discount period, not the date the merchandise was physically received or the date the invoice was received in the payment office (which ever occurs later). The burden of responsibility to see that receiving reports are processed quite often are dumped on the contractors.

Many agencies conveniently "lose" or "never receive" original invoices or invoices for interest on overdue payments, causing our administrative expenses to increase due to reissuing, updating and submitting duplicate invoices. The majority of the time we ultimately never receive payment for these interest penalties. The "lost" invoice excuse is used even when we have certified mail receipts as proof of the invoice having been received by the agency. We send all invoices over $10,000 certified mail return receipt requested. This practice is costly, time consuming and now ineffectual in many cases because the payment (finance) office responds by saying "I don't care how you sent it - I don't have the invoice - send another!" The Finance Officer will then start the counting of the forty five days. It is unfortunate but this happens all to often. ASC receives thousands of invoices from our vendors each year and I doubt that more than two invoices a year are lost via the mail.

The Prompt Payment Act currently allows for automatic payment of interest penalties when the date payment is issued exceeds the 45 day limit. However, it is only on rare occasions, and then more commonly with expensive long distance communication, that interest is paid without the necessity of an interest invoice being issued to the client. We submit about 25 interest invoices a month to the government and we are lucky to collect interest on two of the invoices that were sent for that month. The reason for the government not paying the interest due is again the lack of a receiving report or a lost invoice. As of June 13, 1986 the Government is overdue on 130 outstanding invoices for a total dollar amount of $163,360.00 dating back to January 1985.

More often, ASC experiences many problems with obtaining payment for unearned discounts. In one such instance an invoice was paid 65 paid days after the date it was issued. This shipment left Buffalo, New York on January 13, 1986 for delivery to the Veterans Administration in Ann Arbor Michigan. We invoiced the client on January 20, 1986, the clients check was issued on March 27, 1986 with prompt payment terms having been deducted. Upon receipt of the clients check we sent a letter and an invoice requesting interest penalties and the payment for unearned discount terms. On June 9, 1986 we received a letter from the client stating that they did earn the discount terms they had taken. At this point additional administrative expenses are being incurred due to having to obtain a proof of delivery and delivery date from the freight carrier in order to substantiate our claim for interest and repayment of the discount terms. On F.O.B. Origin contract orders such as this order was, we have to wait until the client decides to initiate a receiving report before we receive payment. According to the current GSA schedule, the client is obligated to pay the contractor for merchandise upon being provided with sufficient proof of shipment. It should be stated that we automatically send proof of shipment with every invoice at the time the invoice is issued, often having to send proof of shipment several times on disputed invoices. Very rarely is this clause of the contract observed by government agencies. Here again the burden of proof is put upon the contractor if the contractor expects to receive payment for merchandise, interest and/or repayment of unearned discount terms the agency has taken.

Another example of a problem collection is with an order from the Navy in Washington, DC. The total dollar amount of the transactions was $463.20. Below are listed the dates of our attempts to collect this small sum. Whenever the administration office is mentioned, it is the administration office of the purchasing division of the Navy Facilities Engineering Command in

Alexandria, Virginia. The certifier is the receiving department of the above command and and the inquiry branch is part of the Navy Finance Center in Crystal City, Virginia.

March 8, 1985 Invoice date for $463.20
May 17, 1985 Interest Invoice issued
May 21, 1985 Received call from the Administration office in Alexandria, Virginia questioning the validity of the interest invoice. In their words the receiving report was already turned in, and they were not liable for interest. I argued this point and requested that they send the interest invoice to Finance Center.
May 21, 1985 Called recording at Finance Center for a status and received no response.
July 1, 1985 Called recording again with no response.
September 4, 1985 Called Administration in Alexandria, Virginia again with no answer.
September 5, 1985 Called Administration in Alexandria, Virginia and left message for original contact. The call was not returned.
September 10, 1985 Called Administration in Alexandria, Virginia and was told that the original contact was gone for the day and will call back.
September 12, 1985 - Certifier called back and stated the certification had been made and sent to the Finance Center for payment on March 12, 1985 and gave phone number of Navy Finance Center's recording for further status.
Morning, September 12, 1985 called recording and left message with no response.
Afternoon September 12, 1985 called recording and left message with no response again.
December 16, 1985 wrote letter to Administration Office along with fresh interest invoice.
February 20, 1986 called Administration again, they reiterated certification on March 12, 1985 and it was out of their hands.
February 20, 1986 called two other offices at Finance Center, and they were not helpful and as a last resort I asked name of Commanding Officer of Finance Center, we were referred to the inquiry branch and never given the name.
February 24, 1986 called inquiry branch at Navy Finance Center and gave all the information about invoice and was informed that call would be returned in 2-3 weeks.
February 25, 1986 Finance Center returned call and has to resubmit paperwork and we will get payment in 2-3 weeks.
May 6, 1986 Left message with the supervisor to call ASC as initial contact on leave, never called back.
May 22, 1986 Initial contact will check again and call back within the week, never called back.
June 13, 1986 - Initial contact out today, supervisor on vacation. Temporary supervisor out to lunch. Left message. One hour later temporary supervisor returned call and checked on paperwork. She verified resubmission on 2-25-86 was done and called certification again, they will call her back.

In summary of this particular case, ASC was informed resubmission is like starting over again from the payment section backward and new certification of receipt must be issued etc. ASC was also informed that interest is computed for only a twelve-month period (that is all their computers handle). So rather than being paid 14 or more months interest, we will only be paid 12; when we do get paid.

Profit of $44.40 on this transaction has been lost and in consideration of time, already used with no payment to show to date even with interest, money has been lost on this and many other transactions.
See formula below:

Selling Price	$414.40
Cost	370.00
Approximate Gross Profit	$44.00

Additional costs of transaction

2	Interest Invoices	$ 2.00	
1	Letter	3.00	
18	Calls	36.00	(min, $2 each)
	Process Original order,	3.60	(30 minutes)
	receive factory invoice & invoice client	3.60	(30 minutes)
	Interest costs to ASC to finance receivables	57.96	
	Total additional costs	$106.16	

Real Gross Profit: If terms are not taken, 12 months interest is added, and account is paid by June 23, 1986 (which is highly unlikely) our loss on this tranaction alone will be approximately $12.03

The enclosed notice (I-FSS-925 4/84) is a clause that is a part of many of our multiple award contracts and we enclose a copy with all invoices clearly outlining the terms and conditions of the GSA contracts, which our orders are placed against. Unfortunately and arbitrarily evidence of shipment is construed by government payment offices as being their own internal receiving reports. They state in no uncertain terms that they will abide only by their own internal regulations and procedures and not by this contract. The cost to fight the Government is too high on most of the orders so we are put into the position of accepting late payments on small dollar orders without interest.

Internally, ASC spends no less than 30 man hours a week on collections of government overdue receivables. Most of this is spent on long distance calls to government agencies all over the country trying to identify the problems to ascertain WHY we were not paid. We get such things as recordings, no one is in who can help us, I can't find your invoice (send another), phones are NOT answered (OFTEN) and so on. For example, to call on an overdue payment with Veterans Administration's Data Processing Center in Austin Texas the usual wait (we pay for these calls) before speaking to anything other than a recording is 15 or more minutes. Meanwhile, we sit on the phone, paying for the privilege of listening to a recording periodically telling us to hold. When finally speaking to a bonifide clerk you are limited to inquiring on three purchase orders per phone call.

Please keep in mind that the standard industry practices concerning the paying of bills on time apply to ASC as well as many small businesses. In order for a dealer to maintain credit with the manufacturer we must and do pay all invoices in 30 days, sometimes 20 days after the date of SHIPMENT. Approximately 10 days have elapsed before the government is invoiced, so that the government DUE date of payment, adding in time for the mail to be delivered, is 15 days AFTER ASC has paid the manufacturer.

In essence, the manufacturers are paid 30 days before ASC can ever begin to work on collecting their receivables from the government agencies.

What does this mean to a small business?

It means that when a government agency pays their invoices, 45 to 60 days after receipt of merchandise or invoice, a small business dealer has already been billed for interest for financing receivables through their bank at prime plus 2%. I would like to present you with the cost of doing business with the government on small orders that are made, F.O.B. Factory.

Selling price to the Government	$300.00
Cost of merchandise to ASC	267.00
Approximate gross profit	33.00

Now lets look at the additional cost of this transaction, when the invoice becomes overdue.

3 collection phone calls	6.00	(2.00 each)
Duplicate invoice	.22	(postage)
60 minutes additional admin costs	7.21	
Original order, time to check, enter order and mail to factory	3.60	(30 minutes)
Receive factory invoice and invoice client	3.60	(30 minutes)
Interest costs to ASC to finance receivables	3.00	($300.00 x 1%)
Additional cost to ASC	23.63	

Real Gross Profit to ASC $9.37 (3%)

Keep in mind that ASC has also PREPAID the freight charges on this order, approximately $33.00 for an order this size, and freight bills are due 15 days from receipt of invoice, per ICC Regulations. So that the entire profit on all orders under $500.00 is tied up in freight charges, more often than not, paid late, very late, by government agencies.

Large problematic orders are proportionately costly to us, generally requiring more phone calls to collect, and of course generating proportionately more cost on interest charges to ASC.

We feel this example is representative of at least 30% to 40% of our small order problems. It is a very real picture clearly identifying the real cost of doing business with the government. Is it any wonder that many manufacturers would rather do business with GSA Multiple Award Contracts through dealers? The manufacturers get paid with normal prices ON TIME and the burden of collections as well as the cost of doing business with the government is totally absorbed by the small business. If it were not for the larger non-problematic orders we occasionally enjoy as a result of these GSA Contracts, ASC would not continue to remain on the Federal Supply Schedule.

In addition, most agencies attempt to withhold payment from the contractor on freight damaged items until they settle their claims with the freight carriers, or until we convince the manufacturer to assume the freight claim and replace the damaged merchandise at no charge to us or the client pending settlement of the claim. This again involves the contractor's time and energy to obtain payment for merchandise when the terms and conditions embodied in the GSA Contract state that the government client is responsible for payment upon sufficient proof of shipment, and furthermore, is responsible for filing freight claims for damage or shortage on F.O.B. Origin contracts.

The profit margins on government contract sales are not adequate enough to compensate the small business for administrative expenses involved with collections on overdue accounts. Commercially, if we find a client is paying for the merchandise late, ASC will charge the client more for the same product to cover our additional expenses. In addition, on new accounts and slow pay accounts, ASC requires a deposit with the order. The General Services Administration will not allow us to charge the Government more on slow pay agencies. GSA assumes incorrectly that all bills are paid on time by all agencies of the government and will not let us exceed the benchmark set by GSA of 12% markup.

The facts and evidence submitted herein are true and ascertainable. ASC Office Furniture once again commends Senator

Trible and his committee for their efforts to amend the Prompt Payment Act to cover the weak areas which permit government agencies to violate the intent of the Act. Nonetheless, deliquent payments by federal agencies and their indifferences to the consequences of these violations of the act to a small business are inexcusable. Even as I write this, ASC is in the process of re-structuring internally to gain more of a foothold in the local marketplace and increase commercial volume, so that the government business will not cripple our profit margin as it has in the past few years. In the furniture industry, in particular, the GSA National Furniture Center holds profits down to dealers to an absolute well defined benchmark, no exceptions. These overdue receivables on small orders have had a crippling effect on us. If the Federal Government demands that contractors offer then better than commercial prices and terms, they should be required by law to adhere to strictly enforced payment regulations or pay the penalty, as the Prompt Payment Act, amended covers so adequately. To the opponents of the Amendment of the Prompt Payment Act who may think that ASC's presentation and perhaps other contractors facts presented are garnished, exaggerated or fabricated, we cordially and sincerely invite them to spend a day in Federal Government collections with our staff,to experience the frustration and waste of man hours which we must cope with to collect overdue receivables from the Federal Government.

Our firm would like very much to see the current Prompt Payment Act amended and strictly enforced. This would benefit the contractor while the government agencies who do pay their debts on time continue to take advantage of the Prompt Payment Act within the regulations. It would also aid in getting the government agencies who do not abide by, but rather abuse the Prompt Payment Act to adhere to the regulations. Thus the U.S. Government agencies can continue to save money and the small businesses of America will continue to grow and prosper.

NOTICE

THIS IS A GSA CONTRACT ORDER. THE FOLLOWING CLAUSE APPLIES TO THIS PURCHASE:

1-FSS-925 (4/84)
PAYMENTS: Offerors are advised that the following provision will be included in any resultant Schedule:

(a) Timely payment by the Government is essential to avoid loss of prompt payment discounts and the imposition of a financing burden on the contractor. FAR Clause 52.232-1 provides that the Government has an obligation to pay contractors promptly. Accordingly, nothing shall limit or restrict agencies placing orders under this Federal Supply Schedule from paying contractors promptly in accordance with their own internal regulations and applicable laws; e.g., when specifically authorized by agency regulations or procedures, payment may be made upon receipt of evidence of delivery to port of embarkation; upon receipt of evidence of shipment in accordance with Comptroller General Decision B-158487, dated April 4, 1966; on the basis of an invoice and a certificate of conformance; or, in accordance with a fast-pay procedure such as that provided in FAR 13.3. In the absence of applicable internal regulations covering payment by an ordering agency, payment shall be made in accordance with the contract terms.

(b) When prices cover delivery to destination, the Government assumes title upon delivery and acceptance at destination, and payment should be made upon the contractor's submission of proper invoices or vouchers. When the delivery order specifies delivery to a port within the U.S.A. and the contract provides only for the delivery to destination within the conterminous United States, payment should be made promptly upon receipt of evidence of delivery to port notwithstanding the fact that the ultimate destination of the supplies may be abroad, provided earlier payment is not otherwise authorized in accordance with (a) above.

(c) When supplies are purchased f.o.b. shipping point/origin, the Government assumes title upon acceptance by the common carrier, and payment should be made upon the contractor's submission of proper invoices and proof of shipment without regard as to whether supplies have reached their ultimate destination. If the contractor is prepaying for the freight to destination, payment for the material, excluding freight charges, should not be delayed pending receipt of proof of the exact amount for the freight charges. Payment for the actual freight charges should be made upon receipt of acceptable proof of the amount; e.g., carrier's freight bill. Such payment may be made at the time, or it may be made subsequently, notwithstanding the fact that payment for the material (less freight charges) may have been made earlier.

Senator TRIBLE. Mr. Richards, you too are most welcome. Mr. Richards is the director of contracts and corporate counsel for Inter Systems, Annandale, VA.

STATEMENT OF T.L. RICHARDS, DIRECTOR OF CONTRACTS AND CORPORATE COUNSEL, INTER SYSTEMS, INC., ANNANDALE, VA

Mr. RICHARDS. Yes, sir. I want to express the appreciation of the ISI for the privilege of speaking to the committee and I will do my best to summarize my written statement. You have stated that the written testimony will be incorporated into the record.

Senator TRIBLE. It will be made a part of the record in full. Move that microphone over a bit, Mr. Richards, so everyone can hear you clearly.

Mr. RICHARDS. What I would like to do, Senator, is just simply go through and highlight some of the comments that are in the written testimony in order to summarize.

Frankly, we can add our voice of support to everything that has been previously stated. What I would like to do is just hit a few points from a little bit different perspective.

Senator TRIBLE. Please.

Mr. RICHARDS. First off, the three main points of the bill as I understand it, which we fully support, is the grace period, the automatic payment of interest, and the conclusive presumption of acceptance. In those three points, one thing that has not been mentioned but I think is extraordinarily important is that they are a synergistic type of operation.

In other words, they need to be tied together and kept together all the way through the bill, because the removal of any of those then reduces very significantly the effect of the other two. It needs, in our view, to be viewed as a system. In other words, all three of these should be interlocked and tied together. If you take one away, it makes a void for the other two. I think it is extraordinarily important.

I think it is important because of something the other gentlemen have alluded to here. That is, that the current environment in which we are attempting to get paid is very turbulent. Part of the problem arises out of the fact that, as pointed out previously, the personnel in the Government are poorly trained and they are inexperienced. Due to the large legislative turmoil that is in Government procurement nowadays, the implementation of the FAR took place only 2 years ago, the Competition in Contracts Act I believe went in about 18 months ago, and there has been a lot of legislation that has gone in and it has just sort of taken the whole Government procurement process and tossed it in the air.

There is a lot of confusion out there even among the people that are trained and experienced. Now I say they are untrained and inexperienced because a year ago I spent 9 months training Government contracting officers, which brings me to another point which I think is very important in the bill that has not been mentioned.

Government personnel do not have any sensitivity as a generalization to the time value of money. Now if you stop and think about that, it makes sense. How many Government personnel have ever met a payroll? They have not. They do not understand the impact of the fact that if you do not get an invoice paid, it could very possibly be that you are going to have people go out the door the next month and join the ranks of the unemployed.

We have had bills backed up. We have had invoices, and we are a $10 million a year business, we have had invoices backed up for $3 million with the Navy. They said they could not get a modification through, Senator, and let me tell you what: That modification involved filling out a form and three lines of typing. They only paid me when I told them that I would fly to California, that I had been a contracting officer before myself, that I would fly to California, sit down and type it for them, if they really had that big a problem. It was only then that they decided, gee, maybe we could get it out, because that was such an embarrassment that they even became sensitive to it.

So those are the two points: the meeting of the payroll and the time value of money.

Now I think your legislation forces this out, because if there is a presumption that the services or supplies have been delivered, then the technical people can no longer use the list of excuses—you see, I think they have a list of excuses. I think they say, there is a list of excuses.

Senator TRIBLE. Do you think this is another Government circular?

Mr. RICHARDS. Possibly. [Laughter.]

They circulate it around, and they say, well, give Davis here, give him excuse No. 10, and when Richards calls up, use excuse 15 on him. So it just goes. They will say, well, I am the wrong office. Call the other office. The other office is any office that you are not talking to. [Laughter.]

So I think that your bill in connection with the Gramm-Rudman Act will then make the Government sensitive to the time value of money, and the Gramm-Rudman Act will then limit the budget so that they are going to have to be looking at their people going out the door if they do not cut the costs.

I think when it comes down to getting personal involvement with them losing their job, their sensitivity might well be increased.

I have included in the testimony submitted a Navy contract which was not subject to the Prompt Payment Act. It covers a period of 5 years, and shows all the various techniques and devices that the Government can use, and did use on us, to avoid payment. Now this contract over the period of the 5 years was a total value, sales value, of about $18 million. During that period of time, using the legislated interest rates, the Government would have—and I computed the interest even though it was not applicable—it would have turned out to be a quarter of a million dollars, approximately. So this shows the impact on business.

Now another part that is collateral to this, Senator, and that I think is very important and has not been mentioned, many small- and middle-sized business people are moving out of Government business. This is serious. This is very serious because our industrial base is shrinking anyway, and to think that our own nationals are moving out of the business because of the extreme level of frustration in getting paid and doing business, in getting statements of work, getting any intelligent answer out of the Government, I think is tragic. It really is tragic, and I think it is a lot less than our company are able to do.

I do not want to belabor it anymore, because I feel like to say much more would be sort of like singing to the choir, but I do appreciate——

Senator Trible. You are singing a good tune, though, Mr. Richards. [Laughter.]

Mr. Richards. Well, thank you very much, sir. We do appreciate the opportunity to participate. We certainly do support anything—the results of this bill are magnificent. Sometimes when you are out there struggling with these issues like we are now, frankly, I told the person who was sitting here in the conference room, that we are practically to the point now where we tie in a submission of an invoice to a dispute under the Disputes Act because some of them we know that we had just as well start the clock running there, because otherwise we are not going to ever get paid because they take 60 days to make a decision on the claim itself. So you might as well kick it out in the beginning.

Regarding the grace period, I would like to make one more comment. It reminded me of a Norcott Parkinson's law. He had several laws of management published years ago. In there he had the one called the Law of Delay. It said, in any given bureaucracy they will take that amount of time, they will insert activity to take up whatever amount of time you give them. If you gave them 6 months to pay us, Senator, they would take 6 months. If you reduce that down to 30 days, they will probably take longer, but the point is they would be more inclined to come into that, particularly when you tie in the rest of the mechanisms of the bill.

Thank you very much, sir.

[The prepared statement of Mr. Richards follows:]

STATEMENT OF T. L. RICHARDS

ISI

HEADQUARTERS
7630 LITTLE RIVER TURNPIKE
ANNANDALE, VA 22003
(703) 642-1600

June 16, 1986

Statement To
Senate Committee on Small Business
Hearing of June 19, 1986

Senator Trible:

Please accept our sincere gratitude for the efforts being made by the committee to prepare legislation to solve some very serious problems regarding the governments slow payment of industry. Inter Systems Inc. (ISI) considers it a privilege and a honor to participate in the effort to correct this problem.

S2479 (Prompt Payment Amendments of 1986) has the following provisions which ISI would like to address:

- o Grace Period
- o Automatic Payment of Interest
- o Conclusive Presumption of Acceptance

It is felt that the best approach to discussing the provisions is to briefly discuss the current procurement payment environment, make general comments on the impact of the provisions, and then comment on some specific situations which ISI has experienced. The procurement field currently has large numbers of poorly trained and inexperienced personnel. This comment is made based on experience working as a consultant for the Department of Defense in training the procurement personnel. Several initiatives are currently underway to correct this problem through higher standards for personnel entering the field and additional training. Also, ISI wants to state that nothing in our comments is meant to demean the many fine professional people working on the government procurement process.

Another factor affecting the general environment is the high amount of legislative turmoil over the past several years which has been brought on by the issue of the Federal Acquisition Regulations and the implementation of the Competition In Contracting Act.

Another factor which is having a dramatic impact is the adversarial mentality existing between government personnel and the contractor. This mentality has replaced the arms-length but team effort which has produced the technological successes in weapons, communications and space.

It is in this kind of environment that the elimination of the grace period, automatic payment of interest, and conclusive presumption of interest enter.

Inter Systems, Inc.

Grace Period

In training government personnel, it was very interesting to me how few of them were aware of the time value of money and the practical realities of meeting a payroll. The elimination of the grace period provided by S2479 will allow the other mechanisms incorporated into the bill to be triggered. This will serve to raise the system sensitivity towards paying the contractors. Therefore, the greatest benefit in reducing the grace period will be the improvement in the system sensitivity by invoking the Automatic Payment of Interest sooner.

The provision is of extreme importance for the following reasons. First, it will be a great aid in making government personnel aware of the time value of money and the importance of paying invoices. Further, the reporting required to implement the provisions of the act will provide visibility of the non payment of invoices. This improved visibility provided to higher management will provide the data to improve the payment process.

Conclusive Presumption of Acceptance

From ISI's perspective this is the most important provision of the bill. This statement is made because the most common delay experienced by ISI is the failure of the government's technical personnel to authenticate the receipting documents. There is usually some internal political reason involved in this delay. This provision in conjunction with the current provisions of the FAR which require the government to either accept the services or supplies or notify the contractor why the items are unacceptable. This provision in conjunction with the other provisions of the act will force that process to operate more efficiently. We believe that this provision will serve to enhance the whole procurement process and reduce the number of claims that the government receives pursuant to the Disputes process.

Practical Application of S2479

ISI believes that the best way to emphasize and demonstrate the impact of the bills provisions is to apply the provisions to a contract.

This first example is contract N00123-81-C-0914 in which ISI imputes interest charges of approximately $238,434. This contract was signed in April 1981. The contract provided for planning of Automatic Data Processing services for Data Processing Center -West. Also, included in the contract was the purchase and leasing of equipment, maintenance and training. The contract value for the period April 1981 to June 1986 is approximately 18 million dollars. A chart showing the imputed interest cost to ISI is shown in attachment #1. It should be noted that this contract is not subject to the Prompt Payment Act since the contract was signed prior to the enactment of the Prompt Payment Act. The purpose of using this example is to dramatize the practical impact of the provisions on an actual case.

The chart titled "Interest Expenses - DPSC West" was prepared using the following guidelines:

1) ISI used the prescribed rates dictated by law for the Prompt Payment Act.

2) Mod No, Invoice #, Amount, Invoice Date, Payment Date, are self explanatory.

3) The period covered pertains to the period of service. For example "services for the month of May".

4) Time Elapse For Colllection. This is the period from performance of service until collection.

5) Overdue.
The amount of time which exceeded the contract payment period of 30 days.

6) Interest Rate Per Day.
The interest rate authorized by the Prompt Payment Act converted to a daily rate is reflected in this column.

7) Interest Expense.
The amount of expense which would have resulted using the rate of interest prescribed for the various periods multiplied by the period of time from the time invoice was submitted until the time the invoice was paid.

Applying the methodology described above the interest charges amounted to an inputed interest charge of $238,434. It is ISI's conviction that when the provisions of S2479 are enacted that the delays enumerated above will not occur.

Before proceeding to discuss how each provision would have assisted in preventing the delays, I would like to answer an obvious question - "Why did ISI tolerate this situation?" The answer is quite obvious. ISI is a small 8(a) firm whose annual sales varied from 2.5 million to 9 million from 1981 to 1985. The contract in question represents approximately 45% of ISI's current sales. Therefore, ISI considered it most imprudent to complain too loudly to client who held such significant economic influence of our company. In other words it amounted to economic duress.

Application of S2429 Provisions to Contract N00123-81-6-0914

Grace Period

As pointed out above the primary benefit is the earlier triggering of the other provisions of the Prompt Payment Act.

Automatic Payment of Interest

This impact of this provision would have been very dramatic. Clearly, the government would have been very sensitive to the payment the large amounts of interest which would have been incurred as a result of the "presumption of delivery" provisions of the act. These provisions in conjunction with the reporting requirements in S2479 would have resulted in the matter being brought to the proper levels of management very early in the contract.

Conclusive Presumption of Acceptance

This provision of S2479 is a very, very important factor in making the bill effective. In ISI's dealings with various agencies the technique used by the technical personnel is to delay payments by failure to take action on the invoices for services. Therefore, the contracts and finance personnel are powerless to take action to pay the contractor. The automatic presumption of delivery will force the technical personnel to make a decision on the acceptance of services. If the decision is negative, then the FAR prescribes procedures to advise the contractor, in order that timely corrective action may take place. It is ISI's position that the cumulative effect of the payment provisions in S2479 will avoid numerous claims and ultimately result in significant savings to the government.

The chart in attachment #1 demonstrates some of the various government acts which results in the contract not being paid. Invoice Submitted - No Payment Received. Page 1 Invoices 411028103 through 411028111 are examples of the government delay payment for two or three years. The invoices represent the typical lost invoice, the other office has (the other office is any office that you are not currently speaking to) or the classic "The check is in the mail".

In situations where the services have been rendered, the government has not issued a contract amendment to add funds to contract, the government has funds and urgently needs the services, the contractor is often requested to delay invoicing until the contract is amended. Examples of this technique may be found on pages 2, 3, 5 and 6 of attachment #1.

To: Senator Trible, Senate Committee on Small Business
From: T.L. Richards, Director of Contracts and Corporate Counsel
Date: June 16, 1986
Page Five

This contract was terminated on 9 June 1986 after ISI had worked on an implied contract since September 30, 1986. The Navy terminated the contract due to lack of Automatic Data Processing Approval and the lack of authorization to contract. As of 17 June 1986, the Navy's Data Processing Center-West was not operating.

In closing, please accept ISI's sincere gratitude for the opportunity to testify regarding S2479. It is a great privilege to participate in the democratic process. Also, ISI wants to express its appreciation to the many capable, wonderful people in the government procurement process that do overcome many difficulties to make the system work.

MOD NO.	INVOICE #	AMOUNT	INVOICE DATE	PAYMENT DATE	PERIOD COVERED	TIME ELAPSE FOR COLLECTION			OVERDUE			INTEREST RATE PER DAY	INTEREST EXPENSE
						Yr.	Mo.	Day	Yr.	Mo.	Day		
P00001	411018101	34,070.00	04/30/81	06/12/81	04/81		1	12			12	.0401	164.
	02	50,870.00	05/30/81	07/14/81	05/81		1	14			14		286.
	03	63,670.00	06/30/81	07/30/81	06/81		1	--			--		--
	04	40,770.00	07/31/81	08/17/81	07/81			17			--		--
	05	40,770.00	08/31/81	11/03/81	08/81		2	3		1	3	.0413	555.
	06	40,770.00	09/30/81	11/10/81	09/81		1	10			10		168.
	411028101	8,742.00	06/30/81	07/30/81	06/81		1	--			--		--
	02	3,313.68	06/30/81	10/05/81	06/81		3	5		2	5		89.
	03	4,186.60	07/24/81	10/07/84	07/81	3	2	7	3	1	7		1,957.
	04	434.35	08/30/81	10/01/84	06/81	3	3	1	3	2	1		207.
	05	1,353.49	08/30/81	10/01/84	07/81	3	2	1	3	1	1		629.
	06	6,101.70	08/30/81	11/10/84	08/81	3	2	10	3	1	10		2,859.
	07	6,101.70	09/01/81	11/10/84	09/81	3	1	10	3	-	10		2,784.
	08	9,052.90	02/15/82	04/08/85	6-9/81	2	7	--	2	6	--		)
	09	24.20	02/15/82	04/30/85	09/81	2	7	--	2	6	--		} 3,960.
	10	895.11	02/15/82	04/30/85	09/81	2	7	--	2	6	--		)
	11	544.50	02/15/82	04/08/85	09/81	2	7	--	2	6	--		)
P00002	411038101	50,840.00	10/28/81	01/05/82	10/81		6	1		5	1		} 3,435.
	02	4,249.00	10/28/81	01/05/82	10/81		6	1		5	1		)
	03	4,008.66	02/15/82	04/30/32	6-9/81		7	1		6	1		} 365.
	04	141.90	02/15/82	04/30/82	09/81		7	1		6	1		)
	05	226.27	02/15/82	04/30/82	09/81		7	1		6	1		)
	66	436.26	02/15/82	04/30/82	09/81		7	1		6	1		)
P00003	411018107	45,720.00	10/31/81	02/16/82	10/81		3	16		2	16		1,371.
	08	45,720.00	11/30/81	02/16/82	11/81		2	16		1	16		457.
	09	45,720.00	12/31/81	02/16/82	12/81		1	16			16		274.
	10	13,250.00	01/31/82	03/11/82	12/81		2	11		1	11		212.
	11	68,870.00	01/31/82	09/07/82	01/82		8	7		7	7	.0410	6,060.
	12	68,870.00	02/28/82	04/12/82	02/82		1	12			12		275.
	13	52,270.00	03/31/82	06/01/82	03/82		2	1		1	1		627.
	14	45,720.00	04/30/82	06/01/82	04/82		1	1			1		18.
	15	4,950.00	05/31/82	07/12/82	05/82		1	1			1		1.
	16	4,950.00	06/30/82	08/16/82	06/82		1	1			1		1.
	17	4,950.00	07/31/82	10/26/82	07/82		2	26		1	26	.0425	113.

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MOD NO.	INVOICE	AMOUNT	INVOICE DATE	PAYMENT DATE	PERIOD COVERED	TIME ELAPSE FOR COLLECTION			OVERDUE			INTEREST RATE PER DAY	INTEREST EXPENSE
						Yr.	Mo.	Day	Yr.	Mo.	Day		
	411018219	4,950.00	08/31/82	11/08/82	08/82		2	8		1	8	.0425	79.
	20	-0-											
	(mod 5) 21	-0-											
	22	4,950.00	09/30/82	11/08/82	09/82		1	8		-	8		4.
	411038207	12,856.25	02/15/82	04/30/82	10/81		6	-		5	-		809.
	08	16,259.65	02/15/82	04/30/82	10&11/81		5	-		4	-		829.
	09	19,570.65	02/15/82	06/07/82	10-12/81		5	7		4	7		1,037.
	10	16,397.93	02/15/82	04/30/82	11-12/81-1/82		4	-		3	-		623.
	11	16,990.01	02/28/82	04/12/82	02/82		1	12		-	12		84.
	12	16,655.65	03/31/82	04/01/82	03/82			1		-	-		
	13	17,170.15	04/30/82	06/24/82	3&4/82		1	24		-	24		17.
	14	18,378.55	05/31/82	07/12/82	05/82		1	12		-	12		91.
	15	18,565.45	06/30/82	08/19/82	06/82		1	19		-	19		148.
	16	18,053.00	07/31/82	10/26/82	07/82		2	26		1	26		415.
	17	18,053.00	08/31/82	11/08/82	08/82		2	8		1	8		288.
	18	15,800.00	08/31/82	11/08/82	08/82		2	8		1	8		252.
	19	35,486.00	09/30/82	11/08/82	09/82		1	8		-	8		106.
P00004	---------	-0-											
P00005	411018221	145,748.00	09/30/82	11/01/82	05/82		5	1		4	1		7,433.
P00006	411018222	29,892.00	10/31/82	12/02/82	10/82		1	2		-	2		23.
	23	29,892.00	11/30/82	12/27/82	11/82		1	--		-	--		--
	24	29,892.00	12/31/82	02/07/83	12/82			7		-	--		--
P00007	411018326	79,947.00	01/31/83	03/03/83	10/82		4	3		3	3		3,117.
	27	79,947.00	01/31/83	03/14/83	11/82		3	14		2	14		2,478.
	28	90,942.00	01/31/83	03/31/83	12/82		3	--		2	--		2,273.
	29	90,942.00	01/31/83	03/31/83	01/83		3	--		2	--	.0308	1,636.
	30	90,942.00	02/28/83	03/31/83	02/83		1	--		-	--		--
	31	90,942.00	03/31/83	04/21/83	03/83			21		-	--		--
	411038320	31,426.00	01/31/83	03/03/83	10/82		4	3		3	3	.0425	1,225.

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MOD NO.	INVOICE #	AMOUNT	INVOICE DATE	PAYMENT DATE	PERIOD COVERED	TIME ELAPSE FOR COLLECTION			OVERDUE			INTEREST RATE PER DAY	INTEREST EXPENSE
						Yr.	Mo.	Day	Yr.	Mo.	Day		
	411038321	70,000.00	01/31/83	03/03/83	10-12/82		2	3		1	3	.0425	980.
	22	41,023.00	01/31/83	03/31/83	10/82		5	-		4	-		2,092.
	23	56,167.00	01/31/83	04/11/83	12/82		3	11		2	11		1,685.
	24	55,520.00	01/31/83	04/11/83	01/83		2	11		1	11	.0308	666.
	25	68,564.00	03/01/83	04/21/83	02/83		1	21		-	21		411.
	26	77,194.00	04/16/83	05/23/83	03/83		1	23		-	23		540.
P00008	411018332	5,498.00	07/31/83	08/29/83	01/83		6	29		5	29		302.
	33	5,498.00	07/31/83	08/29/83	02/83		5	29		4	29		247.
	34	20,154.00	07/31/83	08/29/83	03/83		4	29		3	29		725.
	35	125,752.00	07/31/83	08/29/83	04/83		3	29		2	29		3,395.
	36	125,752.00	07/31/83	08/29/83	05/83		2	29		1	29		2,263.
	37	125,752.00	07/31/83	08/29/83	06/83		1	29		-	29		1,006.
	411038327	1,253.00	07/31/83	08/29/83	02/83		5	29		4	29		56.
	28	10,448.00	07/31/83	08/29/83	03/83		4	29		3	29		376.
	29	50,000.00	07/31/83	08/29/83	(one time)		4	29		3	29		1,800.
	30	100,525.00	07/31/83	08/29/83	04/83		3	29		2	29		2,714.
	31	119,078.00	07/31/83	08/29/83	05/83		2	29		1	29		2,143.
	32	134,429.00	07/31/83	08/29/83	06/83		1	29		-	29		1,075.
	33	50,000.00	07/31/83	08/29/83	(one time)		1	29		-	29		400.
P00009	411018338	133,080.00	10/01/83	11/02/83	07/83		3	3		2	3	.0305	2,528.
	39	133,080.00	10/01/83	11/02/83	08/83		2	2		1	2		1,330.
	40	133,080.00	10/01/83	11/02/83	09/83		1	2		-	2		79.
	411038334	138,632.00	10/01/83	11/02/83	07/83		3	2		2	2		2,634.
	35	143,154.00	10/01/83	11/02/83	08/83		2	2		1	2		1,431.
	36	148,562.00	10/01/83	11/02/83	09/83		1	2		-	2		89.
	37	85,000.00	10/01/83	11/02/83	09/83		1	2		-	2		51.
P00010	411018441	143,327.00	11/01/83	01/23/84	10/83		2	23		1	23		2,293.
	42	143,327.00	12/09/83	01/23/84	11/83		1	23		-	23		1,003.
	43	143,327.00	01/06/84	02/09/84	12/83		1	9		-	9		286.
	411018438	141,873.00	11/01/83	01/23/84	10/83		-	23		-	-		---
	39	45,000.00	12/09/83	01/23/84	(one time)		-	23		-	-		---

MOD NO.	INVOICE #	AMOUNT	INVOICE DATE	PAYMENT DATE	PERIOD COVERED	TIME ELAPSE FOR COLLECTION Yr.	Mo.	Day	OVERDUE Yr.	Mo.	Day	INTEREST RATE PER DAY	INTEREST EXPENSE
	411038440	149,527.00	12/14/83	01/23/84	11/83		1	23		-	23	.0315	1,046.
	41	150,900.00	01/06/84	02/09/84	12/83		1	23		-	23		1,056.
P00011	411018444	146,060.00	02/17/84	03/26/84	01/84		1	26			26	.0339	1,168.
	45	146,060.00	03/01/84	03/23/84	02/84		-	22			--		--
	46	146,060.00	04/01/84	05/24/84	03/84		1	24		-	24		1,168.
	411038442	148,464.00	02/17/84	03/26/84	01/84		1	26		-	26		1,187.
	43	152,259.00	03/01/84	03/26/84	02/84			26			--		--
	44	45,000.00	03/01/84	03/26/84	(one time)		1	26			26		360.
	45	163,578.00	04/01/84	05/24/84	03/84		1	24			24		1,308.
P00012	411018447	146,060.00	05/01/84	07/12/84	04/84		2	12		1	12		2,044.
	48	146,060.00	06/01/84	07/12/84	05/84		1	12		-	12		584.
	49	146,060.00	07/01/84	08/01/84	06/84		1	1		-	1		43.
	411038446	159,488.00	05/01/84	07/12/84	04/84		2	12		1	12		2,232.
	47	45,000.00	06/01/84	07/12/84	(one time)		2	12		1	12		630.
	48	161,285.00	06/01/84	07/12/84	05/84		1	12		-	12		645.
	49	180,305.00	07/01/84	08/15/84	06/84		1	15		-	15		901.
P00013	411018450	146,060.00	08/01/84	09/17/84	07/84		1	17		-	17	.0394	876.
	51	146,060.00	09/01/84	10/31/84	08/84		1	8		-	8		438.
	52	146,060.00	09/20/84	11/07/84	09/84		1	9		-	9		438.
	411038450	164,450.00	08/01/84	09/17/84	07/84		1	17		-	17		986.
	51	45,000.00	08/01/84	09/17/84	(one time)		1	17		-	17		270.
	52	171,490.00	09/01/84	10/31/84	08/84		2	--		1	--		1,886.
	53	248,971.00	09/20/84	11/07/84	09/84		1	7		-	7		497.
P00014	411018453	156,072.00	01/15/85	02/01/85	10/84		3	1		2	1		3,745.
	54	156,072.00	01/15/85	02/01/85	11/84		2	1		1	1		1,872.
	55	156,072.00	01/15/85	02/01/85	12/84		1	1		-	1		62.
	411038454	187,356.00	01/15/85	02/01/85	10/84		3	1		2	1		4,496.

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MOD NO.	INVOICE #	AMOUNT	INVOICE DATE	PAYMENT DATE	PERIOD COVERED	TIME ELAPSE FOR COLLECTION Yr.	Mo.	Day	OVERDUE Yr.	Mo.	Day	INTEREST RATE PER DAY	INTEREST EXPENSE
	411038455	219,241.00	01/15/85	02/01/85	11/84		2	1		1	1	.0394	2,630.
	56	237,735.00	01/15/85	02/01/85	12/84		1	1		-	1		95.
	57	45,000.00	01/15/85	02/01/85	(one time)		1	1		-	1		18.
P00015	411018556	205,301.00	04/22/85	06/10/85	01/85		4	10		3	10	.0332	6,774.
	57	205,301.00	04/22/85	06/10/85	02/85		3	1		2	1		4,106.
	58	205,301.00	04/22/85	06/10/85	03/85		2	1		1	1		2,050.
	411038558	232,314.00	04/22/85	06/10/85	01/85		5	10		4	10		9,989.
	59	105,000.00	04/22/85	06/10/85	(one time)		5	10		4	10		4,515.
	60	248,187.00	04/22/85	06/10/85	02/85		3	10		2	10		5,708.
	61	277,409.00	04/22/85	06/10/85	03/85		2	10		1	10		3,606.
P00016	411018559	150,030.00	07/22/85	09/09/85	04/85		4	9		3	9		4,800.
	60	150,030.00	07/22/85	09/09/85	05/85		3	9		2	9		3,300.
	61	150,030.00	07/22/85	09/09/85	06/85		2	9		1	9		1,800.
	62	29,360.00	07/22/85	09/09/85	04/85		4	9		3	9		939.
	63	29,360.00	07/22/85	09/09/85	05/85		3	9		2	9		645.
	64	29,360.00	07/22/85	09/09/85	06/85		2	9		1	9		352.
	411038562	289,367.00	07/22/85	09/09/85	04/85		4	9		3	9		9,259.
	63	25,000.00	07/22/85	09/09/85	04/85		4	9		3	9		800.
	64	260,940.00	07/22/85	09/09/85	05/85		3	9		2	9		5,740.
	65	25,000.00	07/22/85	09/09/85	05/85		3	9		2	9		550.
	(void) 66												
	67	25,000.00	07/22/85	09/09/85	06/85		2	9		1	9		300.
	72	270,269.00	09/09/85	10/15/85	06/85		3	15		2	15		6,486.
P00017	411018565	150,030.00	08/12/85	09/30/85	07/85		2	--		1	--	.0284	1,200.
	66	29,360.00	08/12/85	09/30/85	07/85		2	--		1	--		234.
	(66-70 void)												
	71	150,030.00	09/09/85	10/15/85	08/85		1	15		-	15		600.
	72	29,360.00	09/09/85	10/15/85	08/85		1	15		-	15		117.
	73	150,030.00	09/19/85	11/06/85	09/85		1	6		-	6		300.
	74	29,360.00	09/19/85	11/06/85	09/85		1	6		-	6		58.
	411038569	25,000.00	08/12/85	09/30/85	07/85		2	--		1	--		200.
	70	442,979.00	09/09/85	10/15/85	08/85		1	15		-	15		1,771.
	73	314,168.00	09/09/85	10/15/85	07/85		2	15		1	15		3,770.

MOD NO.	INVOICE #	AMOUNT	INVOICE DATE	PAYMENT DATE	PERIOD COVERED	TIME ELAPSE FOR COLLECTION Yr.	Mo.	Day	OVERDUE Yr.	Mo.	Day	INTEREST RATE PER DAY	INTEREST EXPENSE
	411038571	25,000.00	09/09/85	10/15/85	08/85		1	15		-	15	.0284	106.
	74	191,052.00	09/19/85	UNPAID	05/85		7	--		6	--		9,975.
	75	449,160.00	09/19/85	11/06/85	09/85		1	17		-	17		2,168.
	76	25,000.00	09/19/85	11/06/85	09/85		1	17		-	17		121.
P00018	411018575	164,757.00	11/22/85	UNPAID	10/85		4	--		3	--		4,246.
	76	31,402.00	11/22/85	"	10/85		4	--		3	--		808.
	77	164,757.00	12/05/85	"	11/85		3	20		2	20		3,769.
	78	31,402.00	12/05/85	"	11/85		3	20		2	20		717.
	79	164,757.00	12/31/85	"	12/85		2	24		1	24		2,535.
	80	31,402.00	12/31/85	"	12/85		2	24		1	24		482.
	411038577	375,627.00	11/22/85	"	10/85		4	--		3	--		9,682.
	78	--											
	79	35,040.00	11/22/85	"	10/85		4	--		3	--		903.
	80	403,147.00	12/05/85	"	11/85		3	20		2	20		9,835.
	81	30,000.00	12/05/85	"	11/85		3	20		2	20		686.
	82	325,666.00	12/31/85	"	12/85		2	24		1	24		5,013.
	83	67,623.00	12/31/85	"	12/85		2	24		1	24		1,041.
TOTAL		$											$ 120,072.

Senator **Trible**. Mr. Richards, I thank you, and I want to thank the entire panel for their contribution today.

I would like at this point to acknowledge the presence of my good friend and colleague from New York, Senator D'Amato, and call on him for appropriate words.

STATEMENT OF ALFONSE M. D'AMATO, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator **D'Amato**. Well, Mr. Chairman, first of all let me commend you for holding this hearing and, more importantly, for authoring these amendments. I am pleased to be a cosponsor because I think you do a great service in attempting to make it possible for small business to be able to compete. I am delighted to have been able to hear just a few of the words of Mr. Richards, not that I would not have liked to hear all the panelists, but just in your summary, Mr. Richards, you are rather cogent in explaining the problems that exist, and that so often those in Government just do not have the slightest concept of why you are pushing, and the necessity and the dollars involved.

They take it as if it is the Government's money, when you have performed the services required, and they are doing you a favor by expediting—and it is not really expediting; it is really doing what they should be doing—in processing your legitimate claims.

So let me commend my colleague, Senator Trible, who has been a leader in this area to see to it that those who render the services are paid for them promptly. This legislation will go a long way toward accomplishing that end.

I am sorry that I cannot stay for the rest of the hearing. We have another hearing at the Defense Appropriations Committee, but I am here to lend my strong support to my colleague's good work, who is a champion of the small business community.

Thank you, Mr. Chairman.

[The prepared statement of Senator D'Amato follows:]

STATEMENT OF SENATOR ALFONSE D'AMATO
COMMITTEE ON SMALL BUSINESS
JUNE 19, 1986 10 A.M. SR - 428A

I WANT TO COMMEND THE CHAIRMAN FOR HOLDING THIS IMPORTANT AND TIMELY HEARING ON S. 2479, THE PROMPT PAYMENT ACT AMENDMENTS OF 1986, INTRODUCED BY OUR GOOD FRIEND FROM VIRGINIA, MR. TRIBLE. THIS LEGISLATION AMENDS THE PROMPT PAYMENT ACT, P.L. 97-177, TO CORRECT THE ABUSIVE PRACTICES OF SOME GOVERNMENT AGENCIES IN THEIR BUSINESS DEALINGS WITH SMALL BUSINESSES.

THE PROMPT PAYMENT ACT ESTABLISHED TERMS AND CRITERIA FOR GOVERNMENT CONTRACTORS PROVIDING SUPPLIES, SERVICES, AND CONSTRUCTION TO FEDERAL AGENCIES IF THE INDIVIDUAL CONTRACT DID NOT SPECIFY A SPECIFIC PAYMENT TERM. THE LAW WAS NECESSARY TO STOP THE ABUSIVE PAYMENT PRACTICES OF SOME OF OUR FEDERAL AGENCIES WHICH IMPOSED EXTREME DELAYS IN PAYING VENDORS. LONG PAYMENT DELAYS TO CONTRACTORS ARE INJURIOUS TO A BUSINESS ENTERPRISE, ESPECIALLY A SMALL BUSINESS. IT THEREFORE BECAME NECESSARY TO ASSURE COMPANIES DOING BUSINESS WITH THE FEDERAL GOVERNMENT THAT THEY BE PAID IN A TIMELY MANNER OR THAT THEY BE PAID INTEREST ON LATE PAYMENTS.

ALTHOUGH THE PROMPT PAYMENT ACT HAS SUBSTANTIALLY INCREASED THE TIMELINESS OF PAYMENTS, SOME AGENCIES CONTINUE TO DELAY PAYMENT BY EXPLOITING THE ACT'S PURPOSE AND THE CONGRESS' INTENT. THE LEGISALTION WHICH WE PROPOSE WILL CORRECT THESE ABUSES AND WILL FULFILL THE ACT'S PURPOSE IN A REASONABLE MANNER.

MR. CHAIRMAN, I WELCOME OUR DISTINGUISHED PANEL OF WITNESSES TO THE COMMITTEE THIS MORNING AND, I LOOK FORWARD TO THEIR TESTIMONY.

THANK YOU, MR. CHAIRMAN.

Senator TRIBLE. I thank you. I appreciate those kind words.

Gentlemen, I thank you for being here today.

Let me next call forward panel 3, David Buttrum who will be representing the Associated Specialty Contractors; M.R. (Mac) Sullivan, who will be representing the American Subcontractors Association; and my friend from Portsmouth, Roy Spears, who will be representing the Associated General Contractors.

Now, Mr. Buttrum, why do you not begin. Mr. Buttrum is the vice president for construction of the Swanson-Nunn Electric Co. in Evansville, IN. Again, you are speaking I guess not only from your own experience, but are here representing the Associated Specialty Contractors.

STATEMENT OF DAVID A. BUTTRUM, VICE PRESIDENT OF CONSTRUCTION, SWANSON-NUNN ELECTRIC CO., EVANSVILLE, IN, ON BEHALF OF THE ASSOCIATED SPECIALTY CONTRACTORS, INC.

Mr. BUTTRUM. Yes, sir.

Mr. Chairman, Mr. Senator, my name is David Buttrum. I am vice president of construction for Swanson-Nunn Electric Co. of Evansville, IN. I am here today representing more than 166,000 firms from the eight construction specialty trade organizations which make up the Associated Specialty Contractors.

Our members do work on Federal construction projects both prime and subcontractors. We were strong supporters of the original enactment of the Prompt Payment Act. We are also strong supporters of the amendments proposed in Senator Trible's bill, S. 2479. We feel they would solve a number of problems in current implementation of the law. However, we feel these amendments must be expanded to cover an area that has been sadly overlooked in the initial legislation and the current proposal. That is, the area of protection for subcontractors on these same Federal construction projects.

Before I begin my statement regarding the proposed amendment to the Prompt Payment Act, I would like to tell you a little bit about the company for which I work. Swanson-Nunn Electric Co. was incorporated in 1903. It is a family-owned electrical contracting business, and my father is the sole owner. I am and have been vice president for construction for 5 years, and am responsible for the total construction effort. I have personally been involved in the construction of three locks and dams, two on the Ten Tom Waterway, and two hydroelectric powerplants.

Swanson-Nunn Electric Co. has a net worth of approximately $1.4 million. We are or have been engaged in construction projects in up to 16 States throughout the Midwest specializing in heavy industrial electrical work, and do extensive subcontracting construction with a select few of large general contractors that specialize in major Government construction contracts around the country.

Most of the Government contractors which we are associated with are leaders in the national construction market. I am here to tell you the horror story of our experience with a prime contractor to the Government that is not. Before I begin with my experience, the Associated Specialty Contractors would request that your committee consider, in addition to the current proposed amendments, in essence we would like to see wording added to S. 2479 which requires that subcontractors be paid within 7 days after the prime contractor has been paid for the work done by the subcontractor, or receive interest on the overdue amount.

Additionally, if three or more payments to the subcontractor are late after the prime contractor himself has been paid, we would like to see this trigger a mechanism for direct payment to the subcontractor from the contracting agency.

Even though our membership acts primarily as first or second-tier subcontractors or as primes, we would not object to this provision being carried out to as many tiers as sub-sub-subcontractors or suppliers as might be necessary to make sure that payments are being made properly and on time.

As an illustration of the problem, let me explain. Swanson-Nunn Electric Co. is currently involved with a construction project with the Department of Energy in Kansas City, MO. The electrical portion of the contract to date with changes and modifications is valued at $850,000. The Department of Energy, according to their own payment records obtained by us through the use of the Freedom of Information Act, has paid the prime contractor $816,000 for work items listed in the billing itemization breakdown pertaining to only electrical work, and based on monthly invoices from us to the prime contractor for that work.

To date, the prime contractor has paid Swanson-Nunn Electric Co. $574,000, in spite of subcontract language declaring an obligation to pay all moneys received for the work accomplished within 10 days of receipt of payment by the contractor. At this time, this particular prime contractor owes Swanson-Nunn Electric Co. $242,000. The prime has received the entire amount in payment from the Government, yet is in arears by one-third of the contract in payments to us. The oldest of the unpaid invoices is 330 days old.

As I stated in my opening remarks, Swanson-Nunn Electric Co. has a net worth of $1.4 million. The amount due us represents 17.2 percent of our total net worth. We are not the only subcontractors on this job with the problem. Four contractors have filed suit for payment under the provisions of the Miller Act. However, bonding companies invariably put off any consideration of such claim until the bonded contractor has become completely insolvent and gone out of business.

In addition to the payment problem, there is the problem of retainage. Under current administration policy, the practice of withholding a percentage of progress payment for security purposes must be justified by the conditions on the job. Our subcontract, however, calls for a retainage of 5 percent of each progress payment until the project is 50 percent complete. It also states that an additional retainage will be withheld if the contracting agency requires a retainage from the prime contractor due to the prime contractor's poor job performance. That retainage has been imposed, and we are now suffering the consequences of shoddy performance by that prime contractor.

There is yet another problem that bears addressing in the arena of prompt payment. That is, the area of directed modifications.

Government construction contracts allow the contracting officer or his agent the opportunity to change the scope of the work for the Government's benefit. One method allows the contracting officer to issue a directed change order. The contractor is required to proceed with payment called an "equitable price adjustment" which is not determined until later.

Even though the contractor is required to expend money for labor, materials, and overhead to carry out the change, until the contracting officer accepts a price for the work, invoices on that work are not considered proper and do not fall under the Prompt Payment Act. Costs are incurred by the contractor long before the Government can be billed for the work.

I know this firsthand, as Swanson-Nunn had $225,000 invested in a Corps of Engineers' project by use of the directed modification by the contracting officer, and was only able to receive payment after the work had been accomplished, costs incurred, and labor paid 12 months later. The Prompt Payment Act should be amended to require swift agreement on price and acceptance of invoices submitted for work completed under a directed change order on Federal construction projects.

The Federal Government has about 50 major requirements in its contracts which required prime contractors to pass through to their subcontractors contract language. These are in the form of special requirements for restrictions on the subcontractor. It is time that the benefits as well as the restrictions of Federal law are also passed through to the subs.

We have attached to our written statement two other representative case studies where the prime contractors have been paid for work of the subcontractors, yet have not been paid themselves. We have also attached a listing of those provisions which are now required to be passed through to the subcontractors. Prime contractors themselves attest to the fairness of this suggested addition to S. 2479. In a joint policy statement agreed to by the Associated General Contractors, the American Subcontractors Association, and the ASC, all parties agreed that no more than 7 days after he has received payment from the owner, a prime should pay each subcontractor the amount received from the owner on his account.

In conclusion, I would like to thank the committee for allowing us and David Buttrum to present our views on the Prompt Payment Act and the proposed amendments to it incorporated in S. 2479. We strongly support inclusion of a faster provision for prompt payment of subcontractors, including retained funds, in this legislation and, with that addition, urge swift passage of this important measure.

I ask your permission to submit additional examples of similar problems which we have received from other contractors and supplementary documentation for inclusion in the hearing record.

Thank you.

Senator Trible. We will be happy to receive that additional information, Mr. Buttrum, and it will be made a part of the hearing record.

[The prepared statement and additional information of Mr. Buttrum follow:]

STATEMENT OF DAVID A. BUTTRUM, VICE-PRESIDENT OF CONSTRUCTION
SWANSON-NUNN ELECTRIC COMPANY

representing the

ASSOCIATED SPECIALTY CONTRACTORS,INC

before the

SENATE SMALL BUSINESS COMMITTEE

June 19, 1986

at Hearings on

AMENDMENTS TO THE PROMPT PAYMENT ACT, P.L. 97-177

Mr. Chairman, Members of the Committee, I am David Buttrum, Vice-President of Construction for the Swanson-Nunn Electric Company of Evansville, Indiana. I am here today representing the more than 166,000 firms from the eight construction specialty trade organizations which make up ASC.

Our members do work on Federal construction projects as both prime and sub-contractors. We were strong supporters of the original enactment of the Prompt Payment Act. We are also strong supporters of the amendments proposed in Senator Trible's bill S. 2479. We feel they would solve a number of problems in current implementation of the law. However, we feel these amendments must to be expanded to cover an area that has been sadly overlooked in the initial legislation and in the current proposal. That is the area of protection for subcontractors on these same Federal construction projects.

In essence, we would like to see wording added to S. 2479 which requires that sub-contractors be paid within 7 days after the prime contractor has been paid for the work done by the subcontractor or receive interest on the overdue amount. Additionally, if three or more payments to a subcontracter are late, after the prime contractor has himself been paid, we would like to see this trigger a mechanism for direct payment of the sub-contractor from the contracting agency. Even though our membership acts primarily as first or second tier subcontractors or as primes, we would not object to the provision being carried out to as many tiers of sub-sub contractors or suppliers as might be necessary to make sure that payments are being made properly and on time.

Let me relate to you our own experience on a Department of Energy job we are doing in Kansas City, Missouri. We are acting as an electrical sub-contractor on this job. The total amount of the contract is in excess of $5 million. Our subcontract, including change orders and completion extensions amounts to a total in excess of $800,000.

Our first invoice was submitted on Nov. 21, 1984. Since that date we have submitted timely statements - at least once a month - for work completed. Beginning with our invoice of July 31, 1985, the prime began to make only partial payment or no payment at all on those invoices. By of the end of this May, the prime was in arrears by more than one-third the total contract price. We are currently owed nearly $242,000 by the prime contractor... about 17% of our total net worth as a company. Through use of the Freedom of Information Act, we know for certain that the prime has received payment in full from the Department of Energy for our electrical work. Yet it has not been paid to us. The oldest of these unpaid invoices is now 330 days past due.

We are not the only subcontractors on this job with the problem. Four contractors have filed suit for payment under provisions of the Miller Act. However, bonding companies invariably put off any consideration of such a claim until the bonded contractor has become completely insolvent and gone out of business.

In addition to the payment problem there is the problem of retainage. Under current administration policy the practice of withholding a percentage of a progress payment for security purposes must be justified by conditions on the job. Our subcontract, however, calls for a retained percentage of 5% of each progress payment until the project is 50% complete. It also states that an additional retainage will be withheld if the contracting agency requires a retainage from the prime. Due to the prime's poor job performance, that retainage has been imposed, and we are now suffering the consequences of the shoddy performance of the prime contractor.

There is yet another problem that bears addressing in the arena of prompt pay. That is the area of directed modifications. Government construction contracts allow the contracting officer or his agent the opportunity to change the scope of the work for the government's benefit. One method allows the contracting officer to issue a directed change order. The contractor is required to proceed, but payment, called an "equitable adjustment" of the contract price, is not determined until later. Even though the contractor is required to expend the money for labor, materials and overhead to carry out the change, until the contracting officer accepts a price for the work, invoices on that work are not considered proper and do not fall under the Prompt Payment Act. Costs are incurred by the contractor long before the government can be billed for the work. The Prompt Payment Act should be amended to require swift agreement on price and acceptance of invoices submitted for work completed under a directed change order on Federal construction projects.

The Federal government now about fifty major requirements in its contracts which it requires prime contractors to "pass-through" to their subcontractors...more than double that number if you count each clause. These are in the form of special requirements or restrictions on the subcontractor. As a result, from the initial moment of agreement the government has has already substantially intruded its mandates into the contract between the prime subcontractor and his subcontractors.

It is time that the benefits as well as the restrictions of Federal law are also passed through to subcontractors. We have attached to our written statement two other representative case studies where prime contractors have been paid for the work of the subcontractors, yet have not been paid themselves. We have also attached a listing of those provisions which are now required to be passed-through to subcontractors.

Prime contractors themselves attest to the fairness of this suggested addition to S. 2479. In a joint policy statement agreed to by the Associated General Contractors (AGC), the American Subcontractors Association (ASA) and the ASC, all parties agree that no more than seven days after he has received payment from the owner a prime should pay each subcontractor the amount received from the owner on his account.

In conclusion, I would like to thank the Committee for allowing the Associated Specialty Contractors to present their views on the Prompt Payment Act and the proposed amendments to it incorporated in S. 2479. We strongly support inclusion of a pass-through provision for prompt payment of subcontractors, including retained funds, in this legislation and, with that addition, urge swift passage of this important measure. I ask your permission to submit additional examples of similar problems which we have received from other contractors and supplementary documentation for inclusion in the hearing record. Thank you.

Attachment A

REPORT DATE: 06/03/86

SWANSON NUNN ELECTRIC COMPANY, INC.
SUMMARY OF OPEN ACCOUNT BALANCE
WEBB MECHANICAL ENTERPRISES - SUBCONTRACT #324-100

INVOICE #	INVOICE DATE	INVOICE AMOUNT	PAYMENT DATE	AMOUNT PAID	AMOUNT DUE	AGE OF INVOICE JUNE 3, 1986
8200-1	11/21/84	22495.76	01/29/85	22495.76	0	
8200-2	12/31/84	38579.13	02/22/85	38579.13	0	
8200-3	01/24/85	33081.35	03/21/85	33081.35	0	
8200-4	02/22/85	103654.7	04/22/85	103654.7	0	
8200-5	03/22/85	28155.93	06/18/85	28155.93	0	
8200-6	04/25/85	30754.36	06/28/85	30754.36	0	
8200-7	05/24/85	64867.2	08/12/85	64867.2	0	
8200-8	06/28/85	93955.68	10/09/85	93955.68	0	
8200-9	07/31/85	66624.02	11/06/85	33312.01	33312.01	307
8200-10	08/29/85	28835.43	12/17/85	14533.57	14301.86	278
8200-11	09/23/85	11085.23			11085.23	253
8200-12	10/21/85	15340.99			15340.99	225
8200-13	11/26/85	12972.73	01/22/86	12972.73	0	
8200-14	12/26/85	71034.27	01/22/86	45846	25188.27	159
8200-14A	12/26/85	20800.36	05/13/86	1120.58	19679.78	159
8200-15	01/23/86	23885.6	05/13/86	5310.24	18575.36	
8200-15	01/23/86		05/13/86	18575.36	0	
8200-16	02/27/86	27357.53	05/13/86	27357.53	0	
8200-17	03/24/86	19919.42			19919.42	71
8200-18	04/24/86	52156.21			52156.21	40
8200-19	05/27/86	4410			4410	7
TOTAL		769965.9		574572.13	213969.13	

Attachment B

IF IT'S ELECTRIC....
CALL SWANSON-NUNN

SWANSON-NUNN
ELECTRIC COMPANY
SINCE 1903

CONSTRUCTION · ENGINEERING · WHOLESALE SUPPLIES · MOTOR REPAIR

400 S E EIGHTH STREET · P O BOX 808 · EVANSVILLE INDIANA 47703 · TELEPHONE (812) 424-7831

Direct Dial 812-464-3715

October 5, 1983

Mr. Marvin E. Saunders
Office of Management and Budget
Finance and Accounting Division, Room 10235
New Executive Office Building
Washington, D. C. 20503

Re: Federal Prompt Payment Act

Gentlemen:

Through the National Association of Credit Management Newsletter, I learned that your office is soliciting information regarding company experiences with the Federal Prompt Payment Act.

Although we support enthusiastically the issuance of OMB Circular A-125 and the Prompt Payment Act, our experience as related to construction has not been satisfactory. Swanson-Nunn Electric Company's main exposure to government contracts is primarily directed toward Corps of Engineers' construction work as a subcontractor to a prime contractor. Our dealings have been second tier. However, we have found that through contract administration of work by the Corps of Engineers, and the Contracting Officer's use of directed modifications and then delaying an agreement that settles the cost of the directed modification, the Corps is able to keep the directed mod from becoming an Amendment to the contract. The Corps, then, is able to delay payments to the contractor and subcontractor and thwart the provisions of the Act. It is apparent that there should be further clarification made to Circular A-125 to define what "a proper invoice" is. And perhaps, tie that clarification in some way to work accomplished through Contracting Officer directed modifications. This would allow contractors to be paid for some or all of their direct costs associated with this type of extra work.

In our case, it has taken up to ten months to receive payment for work accomplished and done as a directed modification. Delays by the government in issuing a contract amendment kept us from using the provisions of the Prompt Payment Act.

SWANSON-NUNN
ELECTRIC COMPANY

Mr. Marvin E. Saunders
October 5, 1983
Page II

I commend the Office of Management and Budget for their active interest in helping the Government become a "good" customer. I hope that although my comments appear to be negative, that the OMB continues to enforce and support ways to insure prompt payment to suppliers and contractors. In this era of super-high interest rates, cash flow is the difference between surviving and failing.

Thank you for this opportunity to express to you my thoughts regarding this matter.

Sincerely,

David A. Buttrum
Vice President, Construction

DAB:EMS

Attachment C

Joint Policy Statement

JPS-1
(Revised)

PROMPT PAYMENT

Undue delays by owner, architects/engineers, general contractors, subcontractors, and sub-subcontractors in processing amounts due to general contractors, subcontractors, sub-subcontractors, and suppliers, or in making timely payments of these amounts, impose hardships and improper financing burdens on the contractors and suppliers and amount to extensions of credit by the contractors and suppliers to their respective higher tiers.

Accordingly, it is the policy of Associated General Contractors and the American Subcontractors Association and the Associated Specialty Contractors that all payments must be made on all contracts promptly. This should include payment for all labor, services, and materials stored on the job site or other approved storage sites as of the closing date of requisitions. This applies to both progress payments and final payments.

All local chapters of the Associated General Contractors, the American Subcontractors Association and the Associated Specialty Contractors are urged to make efforts, singly or cooperatively where possible to persuade all owners, architects/engineers, general contractors, subcontractors and sub-subcontractors to adopt and adhere to this policy in the conduct of their business.

The following schedule of billings, certificates and payments by various participants in the construction process is recommended.

The schedule assumes normal trade contract terms allowing monthly progress payments for work performed and materials suitably stored through the end of the month. This schedule does not refer to payments to suppliers who are not subcontractors.

It is important to note that along the sequence of events, any recipient of a payment request who takes exception to an item of billing should immediately contact the initiating party by telephone and attempt to resolve the matter. Failing resolution, the party taking exception should notify the other party in writing the reasons for the action.

Day of Calendar Month	Event
20th	Sub-subcontractors request payment from subcontractors.
25th	Subcontractors request payment from contractor, incorporating the sub-subcontractor's request in the billing.
1st	Contractor submits to the owner's representative an itemized application for payment with the necessary supporting data, covering the monthly progress of the entire contract being performed.
5th	The owner's representative issues the certificate for payment to the owner for the amount requested.
10th or sooner	The owner makes payment to the contractor for the amount certified by the owner's representative.
No More Than 7 Days After Receipt	The contractor pays each subcontractor the amount received from the owner on his account promptly but not later than seven days after receipt.
No More Than 7 Days After Receipt	Each subcontractor pays each sub-subcontractor the amount received from the contractor on his account promptly but not later than seven days after receipt.

The schedule should be adjusted by making appropriate billings and payments on the last working day prior to any listed Saturday, Sunday or holiday. It is also recommended that collection efforts be commenced immediately following the day any payment due was not paid.

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Attachment D

LIST OF FAR PROVISIONS

REQUIRED TO BE PASSED-THROUGH TO SUBCONTRACTORS

1. FAR 52.202-1 -- DEFINITIONS
2. FAR 52.236-8 -- OTHER CONTRACTS
3. FAR 52.236-7 -- PERMITS AND RESPONSIBILITIES
4. FAR 52.203-3 -- GRATUITIES
5. FAR 52.203-5 -- COVENANT AGAINST CONTINGENT FEES
6. FAR 52.228-5 -- INSURANCE -- WORK ON A GOVERNMENT INSTALLATION
7. FAR 52.236-21 -- SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION
8. FAR 52.236-15 -- SCHEDULES FOR CONSTRUCTION CONTRACTS
9. FAR 52.236-5 -- MATERIAL AND WORKMANSHIP
10. FAR 52.236-14 -- AVAILABILITY AND USE OF UTILITY SERVICES
11. FAR 52.236-10 -- OPERATIONS AND STORAGE AREAS.
12. FAR 52.236-9 -- PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS
13. FAR 52.236-13 -- ACCIDENT PREVENTION
14. FAR 52.236-12 -- CLEANING UP
15. FAR 52.245-3 -- IDENTIFICATION OF GOVERNMENT-FURNISHED PROPERTY
16. FAR 52.246-12 -- INSPECTION OF CONSTRUCTION
17. FAR 52.225-5 -- BUY AMERICAN ACT --CONSTRUCTION MATERIALS
18. FAR 52.208-1 -- REQUIRED SOURCES FOR JEWEL BEARINGS AND RELATED ITEMS
19. FAR 52.247-63 -- PREFERENCE FOR U.S. - FLAG AIR CARRIER
20. FAR 52.247-64 -- PREFERENCE FOR PRIVATELY OWNED U.S. - FLAG COMMERCIAL VESSELS
21. FAR 52.223-2 -- CLEAN AIR AND WATER
22. FAR 52.222-26 -- EQUAL OPPORTUNITY
23. FAR 52.222-35 -- AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS

FAR PROVISIONS cont.

24. FAR 52.222-36 -- AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

25. FAR 52.222-27 -- AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION

26. FAR 52.219-8 -- UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS

27. FAR 52.219-9 -- SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN

28. FAR 52.219-13 -- UTILIZATION OF WOMEN-OWNED SMALL BUSINESSES

29. FAR 52.220-3 -- UTILIZATION OF LABOR SURPLUS AREA CONCERNS

30. FAR 52.220-4 -- LABOR SURPLUS AREA SUBCONTRACTING PROGRAM

31. FAR 52.243.4 -- CHANGES

32. FAR 52.214-26 -- AUDIT - FORMAL ADVERTISING

33. FAR 52.214-27 -- PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA - MODIFICATIONS - SEALED BIDDING

34. FAR 52.214-28 -- SUBCONTRACTOR COST OR PRICING DATA - MODIFICATIONS - SEALED BIDDING

35. FAR 52.215-2 -- AUDIT - NEGOTIATION

36. FAR 52.215-22 -- PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

37. FAR 52.215-24 -- SUBCONTRACTOR COST OR PRICING DATA

38. FAR 52.215-1 -- EXAMINATION OF RECORDS BY COMPTROLLER GENERAL

39. FAR 52.232-17 -- INTEREST

40. FAR 52.249-10 -- DEFAULT TERMINATION OF THE CONTRACTOR

41. FAR 52.233-1 -- DISPUTES

42. FAR 52.204-2 -- SECURITY REQUIREMENTS

43. FAR 52.222-4 -- CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION-GENERAL

44. FAR 52.223-3 -- HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA

45. FAR 52.227-4 -- PATENT INDEMNITY-- CONSTRUCTION CONTRACTS

46. FAR 52.227-1 -- AUTHORIZATION AND CONSENT

47. FAR 52.227-2 -- NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

48. FAR 52.243-3 -- VALUE ENGINEERING - CONSTRUCTION

49. FAR 52.22301 -- CLEAN AIR AND WATER CERTIFICATION

Attachment E

Nathan Alterman Electric Co.

June 11, 1986

Re: Senate Committee Hearings
Slow Pay to Subcontractors

Gentlemen:

We have reviewed several government projects where the pay was exceedingly slow by the General Contractor. Please note as we discussed that most jobs done by reputable area contractors are paid within a 30 day period. However, some contractors have in-house policies of not paying for 60 days, and thus they have operated off of the Subcontractor's money for at least 30 days.

Some examples of these jobs are as follows:

Job #1

Project:	Health Lab
Location:	Brooks Air Force Base, Texas
Contract Number:	DACA63-84-C-0143
Engineer:	U. S. Army Corps of Engineers
General Contractor:	Wallace L. Boldt, General Contractor
Subcontract Amount:	$ 338,817.00
Scope of Work:	Electrical subcontract

Request Number	Amount	Request Date	Pay Date	Age
1	$ 2,752.00	10/23/84	12/31/84	68
2	5,930.00	11/14/84	01/30/85	76
3	23,865.00	12/13/84	02/19/85	66
4	21,680.68	01/25/85	06/17/85	142
5	10,278.00	03/22/85	06/17/85	85
6	(3,910.00)	04/16/85	06/17/85	61
7	14,773.00	04/24/85	07/25/85	91
8	8,914.00	05/21/85	07/25/85	64
9	47,427.00	06/21/85	08/23/85	62
10	50,821.35	07/23/85	09/20/85	57
11	35,989.00	08/21/85	10/18/85	57
12	22,835.00	09/23/85	11/25/85	62
13	34,677.00	10/23/85	12/27/85	64
14	7,499.00	11/20/85	01/29/86	69
15	3,297.00	12/18/85	02/26/86	68
16	4,753.00	01/22/86	03/24/86	62

PO BOX 17426 SAN ANTONIO, TEXAS 78217
(512) 342-9311

Request Number	Amount	Request Date	Pay Date	Age
17	4,178.00	02/24/86	04/28/86	64
18	923.00	03/24/86		
19	9,356.27	05/19/86		

Average Age = 72 days
Interest Cost to Date: $ 3,930.40
Percent of Contract to Date: 1.2%

* * * * * * * * * * * * * * * * * * *

Job #2

Project: Air Traffic Control Tower and Base Building
Location: San Antonio International Airport, Texas
Contract Number: DTFA-83-13-0021
Owner: Department of Transportation, Federal Aviation Administration, Southwest Region, Ft. Worth, Texas
General Contractor: B. B. Andersen Construction Co., Topeka, Kansas
Subcontract Amount: $ 457,858.72
Scope of Work: Electrical Subcontract

Request Number	Amount	Request Date	Pay Date	Age
1	$ 7,100.00	07/22/83	10/25/83	93
2	0.00	08/08/83		
3	2,520.00	08/24/83	10/25/83	61
4	29,025.00	09/22/83	11/09/83	47
5	10,530.00	10/21/83	11/28/83	37
6	129,735.00	11/23/83	02/16/84	83
7	56,475.00	12/21/83	03/29/84	98
8	4,275.00	01/17/84	03/29/84	72
9	20,700.00	02/15/84	03/29/84	44
10	18,675.00	03/19/84	05/07/84	48
11	3,375.00	04/24/84	05/31/84	37
12	12,600.00	06/18/84	08/01/84	43
13	9,450.00	07/19/84	08/17/84	28
14	48,650.00	08/20/84	01/07/85	137
15	5,750.00	09/19/84	01/07/85	108
16	10,167.00	10/17/84	02/06/85	109
17	4,130.00	11/12/84	02/06/85	84
18	9,512.00	12/17/84	02/06/85	49
19	20,453.00	01/21/85	05/06/85	105
20	3,039.00	02/21/85	11/18/85	267
21	10,396.00	03/21/85	06/06/85	75
22	66,020.00	05/17/85	11/26/85	189
23 Final	(24,008.28)	09/30/85	11/26/85	56

Average Age = 85 days
Interest Cost: $ 10,746.00
Percent of Contract: 2.3%

Job #3

Project: 800 Member Army Reserve Center
Location: Fort Sam Houston, Texas
Contract Number: DACA63-80-C-0077
Owner: Department of the Army
General Contractor: Fortec Constructors, Coral Gables, Florida
Subcontract Amount: $ 245,870.00
Scope of Work: Electrical Subcontract

Request Number	Amount	Request Date	Pay Date	Age
1	$ 5,477.00	06/02/30	*	
2	21,054.00	06/25/80	*	
3	39,550.00	07/29/80	10/17/80	78
4	9,637.00	08/27/80	10/06/80	39
5	15,528.00	09/24/80	11/12/80	48
6	16,176.00	10/20/80	*	
7	21,825.00	11/24/80	01/30/81	66
8	13,885.00	12/30/80	03/02/81	62
9	16,772.00	01/31/81	03/16/81	45
10	21,572.00	02/28/81	04/22/81	54
11	21,582.00	03/31/81	05/26/81	55
12	11,971.00	04/30/81	07/28/81	88
13	13,591.00	05/31/81	09/11/81	100
14	2,072.00	06/30/81	09/18/81	78
15	2,417.00	07/31/81	**	

* These dates were not verifiable.
** Part of final pay was written off to bad debts.

Average Age = 62
Known Interest Cost: $ 2,182.50
Percent of Contract: .9%

Most contracts read that the monthly estimate is due by the 25th for work through the 30th, and the General Contractor (GC) is to receive payment from the Owner by the 15th or 20th. Allowing three days for processing and delivery (the checks should be ready for signature when the GC receives payment), then the normal delay from billing to payment should be 23 to 28 days.

A delay of 30 days in payment will result in the Subcontractor having to access his line of credit and incur administrative costs above and beyond the interest cost that an interim loan may cost him. We have attempted to show the interest cost on the above examples based upon an interest rate of 12 percent for late payments beyond 30 days. Though these interest costs in some instances may appear low, the margins allowed on jobs today do not allow unwarranted delays in payment.

I would also like to stress that it is not the large contractor who hurt the most as they may have legal staffs and generally deeper pockets to absorb this added cost. However, as we are seeing all too well today and will see even more in the immediate future, the small businessman, who must take these jobs to survive and cannot afford to hound the GC for prompt payment, is the most likely to fail due to the added costs and especially as these overdue payments become uncollectible.

Please let me know if I can be of further assistance.

Yours very truly,

NATHAN ALTERMAN ELECTRIC CO.

Daryl Klecka / ns

Deryl H. Klecka
President

DK/ns

Attachment F

QUINT CITY ELECTRIC, INC.
1501 - 17TH STREET
EAST MOLINE, ILLINOIS 61244
(309) 755-5018

June 13, 1986

Dear Sirs:

In response to your inquiry with regards to construction pay requests from General Contractors involved with Government Contracts, I wish to submit the following:

We, Quint City Electric, Inc., have for the past 2½ years done a substantial volume, in excess of One Million Dollars, of work for General Contractors on Corp of Engineers & Facilities Projects at the Rock Island Arsenal. It has been our experience that punctual, within 60 days, payment from the General Contractors depends entirely upon the integrety and financial condition of said contractor, as any contract a sub contractor has is with the General Contractor and not the Government. The General Contractor can do as he wishes with his subs, the Government could care less, and we have so been informed of this by various Procurement Personnel. We are at the present trying to collect for a project, No. D-AAA08-85-C-0161, which we started on August 21, 1985 and completed April 19, 1986. The General Contractor has been paid in full and to date has only paid us 35% of our contract price. The excuse given is that the Government has not, as yet, released monies to him. Checking with Procurement Personnel, we were informed they could not release information relative to disbursements and we would have to deal with the General Contractor directly. The Government, it would seem to me, aids and abets the unscrupulous contractor. The current balance due and owing, since 4-21-86, is in excess of Twenty Six Thousand Dollars. As can be readily seen, Quint City Electric, Inc. has been forced to play financier to the General Contractor, and being a small business, government qualified, this causes a major cash flow problem.

Concurrent with the aforementioned project, we are also employed on Contract No. DACA 27-85-C-0083. On this project we have experienced problems of a more severe nature and scope. On this project which is a 100% set aside for small business, we are a third tier sub contractor. What a situation for a small business to occupy. You have all the liability and exposure and the first and second tier contractors reap all the rewards. The local economy, being what it is, and knowing we possessed the expertise to perform the necessary work, were the factors leading to the decision to quote this project. What an error in judgement! Within the first week of the project we discovered the Contracting Officers Representative could require anything, no matter how ludicrous, and we would, by contract, be required to do as requested. Our only recourse for reimbursement being to file a claim for work which we considered to be beyond the scope of the contract. The filing of a claim and a decision of the same require a substantial length of time, 9 months to 18 months, and the requirement to still perform the work in question causes a severe cash flow problem which I am sure most small businesses could not cope with. We are presently financing the aforementioned project in the six figure amount. Thanks to a good credit rating and banking institutions that have confidence in us, we are managing to survive, but have been forced, due to cash flow problems, to restrict our normal workload, thereby reducing our Gross Sales. The Government itself has put us in this position. This was not effected through errors which we made, but by Government Red Tape and incompetence. Subsequent to filing our claim, it was brought to our attention that twice before, exact similar projects performed within the last five years at the same installation, have been performed. In both cases the Electrical Contractors have had to file similar claims. The bidding documents and specifications have not been significantly changed and the same problems exist. As to the prior Electrical Contractors, one was forced out of business and the other has to date, not quoted a Government project. The end result of these policies will have the effect of prohibiting small business concerns from quoting Government projects, thereby reducing competition and increasing the cost of Government projects. As can be readily ascertained from the two aforementioned projects, Quint City Electric, Inc., due to our involvement on Government projects, has had to finance in excess of One Hundred and Twenty Six Thousand Dollars ($126,000.00). This is something no small business should be forced nor expected to endure. Further evidencing our contention of increased project costs is the ReArm Phase Three Project bid on May 29 of this year, of the Nineteen (19) General Contractors who procured plans, only One (1) responded with a Quote, which incidently was Nineteen Million Dollars ($19,000,000.00) higher than the Government estimate.

It is my concerted opinion that unless appropriate changes are effected, as to Government control of General Contractors and Government personnel responsible for the overseeing of construction projects, they will destroy the lifeblood of America, the small businessman. The Government, it would seem, should have the expertise on staff to act as their own Project Manager, it has been our experience that they do this anyway. As their own Project Manager, all contracts would be direct to the respective contractors, thereby permitting the Government to excercise more control of the individual contractors and promote a harmonize construction atmosphere.

We, Quint City Electric, Inc. will, upon request, provide documentation to any allegations contained herein and if desired submit to a complete audit of any and all prior and current Government Contracts to further evidence our sincerity to the problems involved.

In summation, I submit the aforementioned projects are the rule, not the exception, concerning Government Contracts. They are not unique to our firm, as every Electrical Contractor whom has performed construction at the Rock Island Arsenal can relate many horror stories of his own. I mention the Rock Island Arsenal because this is the only Government Facility which our firm has been involved with and thereby have first hard knowledge with regards to sub contracting. I would also wish to pose a question, with the local economy being what it is, and there being in excess of Forty (40) qualified Electrical Contracting Firms in the area, why are there but Four (4) or Five (5) firms which quote work at the Rock Island Arsenal, is a voluntary closing of a company preferred to a forced closing?

Respectfully Submitted

Gerald T. Baker

Gerald T. Baker
President

GTB:law

Attachment 6

W. K. JENNINGS ELECTRIC CO., INC.
PHONE (512) [illegible] [illegible] LANE
Austin, Texas 78754

June 6, 1986

Dear Sir:

I am furnishing the following information.

We serve primarily as sub-contractor on larger government projects. Therefore, we are subject to the disposition of the General Contractor as it pertains to when we get payments and the retainages withheld.

As a practical matter, our company is generally paid by the General Contractor within 50 days of our invoice. However, as you may be aware, the Corps of Engineers has done away with the requirement of withholding retainage from the General Contractor. In most cases, however, the General Contractors still withhold from their subs either five or ten percent retainage until the project is complete.

Since we as subcontractor have already bonded the project, we are in essence financing the General Contractor to the extent of the retainages withheld. This in turn forces us to raise our price to some extent in order to cover the additional cost of financing.

We are showing below, as examples only, some of our most recent projects performed as a sub-contractor for the Corps of Engineers.

Contractor	Contract Price	Retainage % Withheld
Wilmac Construction Co.	$ 342,000.00	10%
RGM Construction Co.	120,974.00	10%
Goolsby Building Corp.	264,452.00	5%
Goolsby Building Corp.	351,022.00	5%
Chaney-Cox Construction Co.	244,000.00	10%
Emerson Contraction Co.	183,000.00	10%
Clearwater Construction Co.	1,900,000.00	10%
T. H. Taylor, Inc.	689,000.00	10%

All of the above projects are well on their way to completion except for the Clearwater project. As you can see, we have a lot of money tied up in retainage which we believe may not be withheld from the General Contractors.

Yours truly,

Charles R. Baker

Charles R. Baker
Secretary-Treasurer

CRB/me

Senator TRIBLE. Why do I not next call on Mr. Spears, since he finds himself sitting between you two, and also somewhat surrounded by your testimony. We will have a bit of point-counterpoint here.

Mr. Spears is president of Shirley Construction Corp. in Chesapeake—or rather in Portsmouth. I could get myself in serious trouble. [Laughter.]

Mr. SPEARS. It is all Hampton Roads.

Senator TRIBLE. In Portsmouth, VA. It is all Hampton Roads, exactly right. He today represents the Associated General Contractors of America.

Roy, please proceed.

STATEMENT OF ROY E. SPEARS, JR., PRESIDENT, SHIRLEY CONSTRUCTION CORP., PORTSMOUTH, VA, ON BEHALF OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

Mr. SPEARS. Thank you, Senator Trible.

Again we appreciate the opportunity to come before this committee and express our views on this very important issue. AGC greatly appreciates the opportunity to present its comments on S. 2479 and the administration of the Prompt Payment Act.

AGC strongly supports the quick passage of S. 2479, particularly sections 5 which specifically applies to the Prompt Payment Act for construction, and section 8(b)(1)(c) which corrects the improper withholding of payment until the 30th day after the request is received by the Federal Government.

General contractors can attest to the problem of slow payment by the Federal Government on invoices submitted by general contractors. I must emphasize that not every agency on every contract is delinquent in making progress payments. Congress recognized the problem that the Federal Government's contractors and vendors frequently have in collection from the Federal Government on progress payments. In 1982 the Congress took action and enacted remedial legislation, the Prompt Payment Act.

Correct and proper implementation of the act has been a major problem for the construction industry. A problem encountered by the construction industry concerns whether the provision of the Prompt Payment Act applies to construction progress payments. Most agencies have not applied the act to construction progress payments, and thus no protection is afforded constructing contractors for late payments.

AGC requested the groups with control of acquisition regulations, the Civilian Agency Acquisition Council, and the Defense Acquisition Regulatory Council, to correct the improper interpretation of the Prompt Payment Act by Federal construction awarding agencies. The response from these two groups unfortunately was that agencies are not to apply the provisions of the Prompt Payment Act to construction progress payments.

There is also another problem for contractors in receiving timely payment on construction progress payments. This problem involves the cash management procedures of the Department of Treasury. The final implementation guidance of the Prompt Payment Act issued by the Office of Management and Budget includes elements of the Treasury Department's cash management procedures. These procedures require the payments of invoices on progress payments must be made as close a possible to the due date if one is stipulated in the contract, or 30 days after receipt of an invoice of progress payments requested if no due date is stated.

This requirement of the Treasury Department which has been reaffirmed and reimplemented by OMB has actually slowed payments on many Federal construction progress payments. Agencies which would normally pay within 15 days after submittal of a request for progress payment are prevented from doing so and must instead withhold payment until the 30th day after submittal of the request for the progress payment.

The Treasury's cash management procedures are applicable to payments regardless of whether an agency considers the payment covered by the Prompt Payment Act.

AGC strongly supported passage of the Prompt Payment Act. Our reasons for support emanated from the belief that invoices and progress payments should be paid promptly. Frequently in construction materials, labor and services or supply are put in place and paid for by many contractors before the progress payment requests are submitted to the Government. Payments for these construction materials and construction services are needed immediately after the request is made, and the payments should not be subject to delay. Agencies must be directed by Congress to make payments prompty.

It is well known that construction by State and local governments with Federal grants far exceed that done directly by the Federal Government. Some Federal grant recipients spending Federal dollars are just as slow as Federal agencies in paying bills for construction. The provisions for the proposed amendment to the Prompt Payment Act should be strengthened to explicitly include the recipient of Federal agent grants.

In the letter that you recently sent to me, Senator Trible, you asked that we speak to the Prompt Payment Act that applies to the contract between the general contractor and the subcontractor, which has been elaborated on here this morning to a certain extent.

AGC believes that it should not, and we have several reasons for that. Privity of contract between the general contractor and its subcontractor bars Government involvement in the contractual relationship. It is a well established principle of law that a contract is a private matter between independent parties of relatively equal bargaining power in a free marketplace.

This construction contract between a prime contractor and a subcontractor is such a private matter. The Federal Government signs no contract with the subcontractor but instead relies on its contract with the prime contractor to deliver a project on time at the lowest possible cost to the taxpayer. This system has worked well and is a well-established matter of Federal procurement law.

Also, interjecting Government into the privity of contract between the general contractor and its subcontractors would also interject Government into disputes between such parties, thus giving the Government needless exposure to claims made by the subcontractors against each other or the general contractor.

The contentiousness that such action would create would in turn subvert the management control that Government acquires by awarding a single contract for construction with the responsibility properly placed on the general contractor for completing the contract on time and at the price quoted.

The major model of subcontract agreements which have been prepared by the American Institute of Architects, and by the Associated General Contractors of America, address these subjects on prompt payment between the general contractors and its subcontractors. In both those documents, Senator Trible, the language is that the general contractor will pay the subcontractor within in one case 3 days, and in the other case 7 days.

I might also state that these three organizations who appear today are on a joint committee, and have published what they call a construction survival kit. These are guidelines that we try to use within the industry in working together. In that guideline it is also stated that the general contractor will pass on payment to the subcontractor within 7 days.

So we feel like this is the proper forum in which those kinds of things should be taken care of, and not in the form of Government getting involved in our business any more than they already are.

In summary, AGC respectfully requests Congress to enact S. 2479, particularly section 5 which extends application of the Prompt Payment Act to construction, and section 8(b)(1)(c) which we believe will correct the present withholding of payment until the 30th day after a payment request is made which contractors are now experiencing.

AGC also urges action strengthening the Prompt Payment Act to apply its provisions to federally assisted funds. AGC also recommends that Congress not extend the provisions of the Prompt Payment Act to relationships between the general contractor and its subcontractors.

[The prepared statement of Mr. Spears follows:]

Testimony of

Roy E. Spears, Jr.

on behalf of

The Associated General Contractors of America

Presented to the

Committee on Small Business

United States Senate

on the Topic of

The Proposed Prompt Payment Amendments of 1986, S.2479

AGC is:

- More than 32,500 firms including 8,400 of America's leading general contracting firms responsible for the employment of 4,000,000-plus employees;
- 108 chapters nationwide;
- More than 80% of America's contract construction of commercial buildings, highways, industrial and municipal-utilities facilities.

Mr. Chairman and Members of the Committee, my name is Roy E. Spears, Jr., President of the Shirley Construction Corporation in Portsmouth, Virginia. I am also Vice President of the Associated General Contractors of Virginia. I greatly appreciate this opportunity to testify before the Committee today on behalf of the Associated General Contractors of America.

AGC greatly appreciates this opportunity to present its comments on S.2479 and the administration of the Prompt Payment Act. AGC strongly supports the quick passage of S.2479, particularly Section 5 which specifically applies the Prompt Payment Act to construction, and Section 8(b)(1)(c) which corrects the improper withholding of payment until the 30th day after the request is received by the federal government.

General contractors can attest to the problem of slow payment by the federal government on invoices submitted by general contractors. These invoices are known as applications for progress payments in the construction industry. I must emphasize that not every agency on every contract is delinquent in making progress payments, however, slow payment is sufficiently frequent to warrant a legislatively mandated remedy.

The harmful effects of slow payment from a federal agency on a construction prime contractor are significant. Anticipated cash flow is interrupted when payments are delinquent, necessitating that the contractor must either transfer funds from an interest-bearing account of his own or must borrow funds at commercial interest rates to meet payments on payrolls and material bills. This is a significant cost element, but unlike other cost elements of a contract, is not included in the plans and specifications on which the contractor must base his bid. Consequently, the contractor must absorb the significant financing costs associated with slow payment by agencies of the federal government.

Congress recognized the problems that the federal government's contractors and vendors frequently had in collection from the federal government on progress payments. In 1982, Congress took action and enacted remedial legislation, the Prompt Payment Act, to eliminate the adverse impact that slow payment had on business.

The intent of the Prompt Payment Act was to ensure that federal awarding agencies paid their contractors in a timely manner or face paying interest penalties on overdue invoices and requests for payment. Specifically, the Act provides for payment of interest by federal agencies on invoices and progress payments computed from the due date of the invoice or progress payment, or 30 days after an invoice or progress payment which does not have a due date is submitted. Federal agencies, however, are permitted 15 days after the due date or 45 days after the submitted date to make payment before interest will be computed on the overdue invoice or progress payment.

Correct and proper implementation of the Act has been a major problem for the construction industry. The problem encountered by the construction industry concerns whether the provisions of the Prompt Payment Act apply to construction progress payments. Most agencies have not applied the Act to construction progress payments and thus no protection is afforded the construction contractor on late payments. These agencies contend that construction progress payments are not covered by the Act.

AGC requested the groups which control the acquisition regulations, the Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulatory (DAR) Council, to correct the improper interpretation of the Prompt Payment Act by federal construction awarding agencies. The response from these two groups, unfortunately, was that agencies are not to apply the provisions of the Prompt Payment Act to construction progress payments.

BEST COPY

There is also another problem for contractors in receiving timely payment on construction progress payments. This problem involves the cash management procedures of the Department of Treasury. The final implementation guidance for the Prompt Payment Act issued by the Office of Management and Budget (OMB) includes elements of the Treasury Department's cash management procedures which are contained in I Treasury Fiscal Requirements Manual 6-8040.30. These procedures require that payments on invoices and progress payments must be made as close as possible to the due date, if one is stated in the contract, or 30 days after receipt of an invoice or progress payment request if no due date is stated. This requirement of the Treasury Department, which has been reaffirmed and reimplemented by OMB, has actually slowed payment on many federal construction progress payments. Agencies which would normally pay within 15 days after submittal of a request for progress payment are prevented from doing so and must, instead, withhold payment until the 30th day after submittal of the request for progress payment. The Treasury cash management procedures are applicable to payments regardless of whether an agency considered the payments covered by the Prompt Payment Act.

AGC strongly supported passage of the Prompt Payment Act. Our reason for support emanated from the belief that invoices and progress payments should be paid promptly. In construction, materials, labor and services are supplied, put into place, and paid for by the contractor before the progress payment requests are submitted to the government. Payments for these construction materials and construction services are needed immediately after the request is made, and the payments should not be subject to delay. Agencies must be directed by Congress to make payment promptly.

It is well known that construction by state and local governments with federal grants far exceeds that done directly by the federal government. Some federal grant recipients, spending federal dollars, are just as slow as federal agencies in paying bills for construction. Office of Management and Budget Circulars A-102 and A-110, which contain the rules governing administrative requirements for the managers of these federal dollars, are silent on the issue of on-time payment. The provisions of the proposed amendments to the Prompt Payment Act should be strengthened to explicitly include the recipients of federal agency grants.

In summary, AGC respectfully requests Congress to enact S.2479, particularly Section 5 which extends application of the Prompt Payment Act to construction, and Section 8(b)(1)(c) which we believe will correct the present withholding of payment until the 30th day after a payment request is made. AGC also urges action strengthening the Prompt Payment Act to apply its provisions to federal assistance funds.

Senator TRIBLE. Mr. Spears, I thank you for your testimony.

Mr. Sullivan, before you testify, we will have to recess. There is a vote now going on on the Senate floor, and I need to go over and record my presence and hopefully cast the right vote for Virginia and for America.

So we will recess at this point, and I will be back in a matter of minutes.

[Recess.]

Senator TRIBLE. The committee is once again in session. We will hear in a matter of moments from Mr. Sullivan.

Let me tell panels 4 and 5 that we will have to recess after Mr. Sullivan's testimony and resume our discussions at 1:30. So I would invite those who have not had an opportunity to testify to come back at 1:30 and hope that you all will join me here at 1:30 fairly promptly when we will proceed.

I am sorry that we were not able to complete the testimony this morning.

Now then let us hear from Mr. Mac Sullivan. Mr. Sullivan is the executive vice president of the Sullivan Mechanical Contractors, Inc., Shenandoah, VA. He is here today representing the American Subcontractors Association.

Mr. Sullivan, you are most welcome.

STATEMENT OF M.R. (MAC) SULLIVAN, JR., EXECUTIVE VICE PRESIDENT, SULLIVAN MECHANICAL CONTRACTORS, INC., SHENANDOAH, VA, ON BEHALF OF THE AMERICAN SUBCONTRACTORS ASSOCIATION

Mr. SULLIVAN. Thank you, sir.

Being a constituent, it is a great pleasure and an honor to address the Senator from Virginia and this committee.

Senator TRIBLE. You have my special attention, I can assure you. [Laughter.]

Mr. SULLIVAN. Thank you.

My name is Mac Sullivan. I am executive vice president of Sullivan Mechanical Contractors, a family-owned company in Shenandoah, VA. Today I am representing the American Subcontractors Association. ASA is a national trade association of more than 6,000 firms representing all major construction trades in 55 chapters.

In addition to its individual company members, ASA represents 17 other specialty trade associations with members of their own. Many ASA members do Federal construction, so the association has a direct and a real interest in the implementation of the Prompt Payment Act.

Since the act took effect in October 1982, the Federal Government's payment practices have improved dramatically, but one thing has not improved, and that is the payment of subcontractors on Federal construction. In a recent survey of its members, ASA found that the inability to get paid in a timely manner for work performed is the most serious problem facing subcontractors.

Subcontractors depend on the cash-flow generated by progress payments to meet their payrolls, and to pay their loans, and to pay their suppliers, yet some prime contractors take 90, 120 or more days to pay their bills. Let me demonstrate what that time delay means to a typical subcontractor on a typical job.

[Mr. Sullivan puts stacks of representative money on the witness table.]

Mr. SULLIVAN. Let us take for example a $500,000 mechanical subcontract scheduled to take 5 months to complete. If you will allow me to simplify just a little bit, let us assume that that work will be divided evenly over the duration of the project. So during the first month, the subcontractor spends $100,000 on supplies and labor.

In the construction industry, most suppliers demand to be paid in advance. We must remember that Federal law requires that we pay our workers weekly. The subcontractor will requisition for July's work, the first month, around July 25. The prime contractor then combines the many subcontractors' payment requests into an itemized application for payment with necessary supporting data.

If the general contractor is a good manager, he will submit his application of payment to the Government around August 1, and the Government will consider it received about the 5th. The Government's 30-day timeclock runs out about September 4. In the meantime, the subcontractor has paid out a second $100,000 and has not yet received a penny for his efforts, but the general contractor has been paid for July.

If the Government required prompt pay for subcontractors as do 12 States, the subcontractor would be paid by September 11, 73 days after his first cash outlay and 48 days after he has submitted his request for payment. Instead, the odds are he will not get paid during September, and in the meantime he has paid out another $100,000. If he is working for a good, general contractor, he may only have to wait another 30 days until October 4 to be paid for July. So if our subcontractor is lucky, he will only pay out $300,000 before his first payment of $100,000. But on many projects, he will pay out $400,000 or even $500,000 before he receives his first progress payment.

For a big business, such a delay may cause some consternation in the bookkeeping department, but business would go on as usual. For a small firm the size of most construction subcontractors, one payment might mean the difference between survival and disaster.

The magnitude of this problem can be better understood when you recognize that on Federal building projects, subcontractors provide as much as 80 percent of the onsite labor and materials. ASA believes that 7 days is sufficient time for a prime contractor to pay his subcontractors. After all, the only thing the prime contractor has to do is write the check. He has certified to the Government that the subcontractor has completed his work before incorporating the subcontractor's billing into the contractor's billing to the Federal Government. If full payment has not been earned by a subcontractor because of poor performance, the prime contractor should not have certified the completion of the work in his billing to the Government.

Thus the Government, not the prime contractor, should be holding all unearned payments until they have been earned; 7 days is the maximum standard for subcontractor payment in the private sector. The American Institute of Architects, document A-401, Standard Form of Agreement between Contractor and Subcontractor, provides for payment within 3 days. The Associated General Contractors of America, document No. 600, Subcontract for Building Construction, provides for such payments to subcontractors within 7 days after receiving payment by the prime.

So does a recently adopted joint policy statement by AGC, ASA, and ASC.

Although at first a proposal for prompt pay for subcontractors may be regarded as an intervention into a contractual relationship between other parties, it should be recognized that the prime contractor is only a conduit for transmittal of payments from the Federal Government to those who have actually performed the work or supplied the material. The money belongs to the Government until it is paid to the prime contractor. Thereafter, it belongs to the subcontractors and suppliers, except for that portion earned specifically by the prime contractor. The Federal Government has every right to be concerned that such payments are paid. If the Federal Government is to achieve the intended goals of the Prompt Payment Act, that of improved cash-flow, improved cash management, and lower costs, it must exercise control of its funds. Prompt pay for subcontractors would help achieve this.

Senator, I thank you and the other members of the committee for this opportunity to present the subcontractors' case on prompt pay for subcontractors. We have a much more detailed written statement that we ask be incorporated into the hearing.

[The prepared statement of Mr. Sullivan follows:]

STATEMENT OF M. R. (MAC) SULLIVAN, JR.

on

PROMPT PAYMENT ON FEDERAL CONSTRUCTION

on behalf of the

AMERICAN SUBCONTRACTORS ASSOCIATION

to the

COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE

June 19, 1986

AMERICAN SUBCONTRACTORS ASSOCIATION 1004 DUKE STREET, ALEXANDRIA, VA 22314-3512
(703) 684-3450

Prompt Payment on Federal Construction

The American Subcontractors Association is a national trade association with nearly 6,000 firms representing all major construction trades in 55 chapters. In addition to its individual company members, ASA represents 17 other specialty trade associations with members of their own.

ASA is the only national organization that speaks exclusively for the interests of construction subcontractors. ASA is dedicated to improving general business conditions for subcontractors through unified and cooperative actions.

In a recent survey of subcontractors, ASA found that the most important issue facing construction subcontractors today is getting paid in a timely manner for work performed. Although concern about the nation's economy and the keen competition in the construction industry ranked high, the overwhelming majority of subcontractors participating in the survey reported that the inability to get paid in a timely manner is their most serious problem.

AMERICAN SUBCONTRACTORS ASSOCIATION 1004 DUKE STREET, ALEXANDRIA, VA 22314-3512
(703) 684-3450

Many ASA members perform construction for the federal government. Sometimes they serve as prime contractors, contracting directly with the federal government. More often, they serve as subcontractors, dealing with the government only through a prime contractor. In both situations, these specialty trade contractors have a direct and real interest in the implementation of the Prompt Payment Act.

For a big business, a delay in payment may cause some consternation in the bookkeeping department, but business would go on as usual. For a small firm--the size of most construction subcontractors--however, one payment might mean the difference between survival and disaster.

The Prompt Payment Act

In 1982, Congress passed and President Reagan signed the federal Prompt Payment Act. This Act requires federal agencies to pay all bills within 30 days. Agencies failing to pay within 45 days must automatically pay interest penalties.

Since the Prompt Payment Act took effect in October 1982, the federal government's payment practices have improved dramatically.

Prior to passage of the Prompt Payment Act, ASA received numerous calls each week from members complaining about slow pay or lack of pay by the federal government and asking for assistance in receiving payment. Since passage of the Act, the number of these calls has been reduced. And, often when we do receive calls about lack of pay or slow pay, other problems or issues are involved or the Act does not apply.

However, as with many new laws, the implementation of the Prompt Payment Act has not been perfect. Among the problems that subcontractors have faced are:

--failure of federal agencies to pay their bills on time;

--failure of agencies automatically to pay interest owed on late payments; and

--failure of agencies to notify contractors when their invoices are incorrect.

But perhaps, the most serious problems faced by construction subcontractors are:

--the claim by federal agencies that the Prompt Payment Act does not apply to construction progress payments;

--the withholding of retainage; and

--the failure of prime contractors with the government to pass the benefits of the Prompt Payment Act on to their subcontractors.

Construction Progress Payments

Both the United States Senate and the House of Representatives clearly contemplated and intended that the prompt payment and interest requirements of the Prompt Payment Act would apply to progress payments.

There were numerous references during House committee hearings, and in the reports submitted to the committee regarding this bill, to the need for such legislation to encompass progress payments as well as final payments in government contract situations. See "Hearings before a Subcommittee of the Committee on Government Operations, House of Representatives" regarding H.R.4709 (the bill that eventually evolved into the "Prompt Payment Act", Public Law 97-177 (1982)) e.g., pages 35, 151, 328-331, 336-338, etc. (United States Government Printing Office Publication 90-2470 (1982)). The operative provision is now set forth in 31 U.S.C. Sec. 3902, regarding "interest penalties" which provides in sub-part (a) that:

> "Under regulations prescribed under Sec. 3903 of this title, the head of an agency acquiring property or service from a business concern, who does not pay the concern for each complete delivered item of property or service by the required payment date, shall pay an interest penalty to the concern on the amount of the payment due . . . ." (emphasis added)

The only language that might be construed to suggest that the Prompt Payment Act only applies to final and not interim payments would be the underscored portion of the preceding quote referring to "complete delivered item of property or service."

However, the rest of the statute clearly refutes such a limited construction.

In pertinent parts of the related 31 U.S.C. Sec. 3903, Congress directed that:

> "The Director of the Office of Management and Budget shall prescribe regulations to carry out Sec. 3902 of this title. The regulation shall:
>
> (1) Provide that the required payment date is:
>
> (A) the date payment is due under the contract for the item of property or service; or
>
> (B) 30 days after a proper invoice for the amount is received if a specific payment date is not established by contract;
>
> . . .
>
> (4) Provide separate required dates for a contract under which property or services provided in a series of partial execution or deliveries to the extent the contract provides for separate payments for partial execution or delivery; . . . ."
>
> (emphasis added)

That the language in Sec. 3903(4) quoted above was intended to encompass "progress payments" is clearly indicated by the House and Senate Committee reports tendered in support of the bill prior to its passage. The House of Representatives' report noted regarding this specific portion of the Act that:

> "To the extent that contracts involving a series of partial payments or executions provide for separate payments, OMB's regulations shall specify separate dates when payment is due. This provision is intended to cover situations where the government and a business concern contract for separate payment for partial deliveries or executions; for example, progress payments." (emphasis added).
> H. Rept. 97-461, p.14.

Similarly, the Senate Committee report noted that the same portion of the Act:

> "[D]irects the Administrator of the Office of Federal Procurement Policy to promulgate regulations concerning contracts which provide for separate payments for partial delivery or execution of property or services, requiring (1) due dates for each separate payment and (2) the payment of interest on any amount which is not paid by the due date. This provision is intended only to reach

> circumstances where the government and a contractor contract for separate payment for partial deliveries or executions; *for example progress payments*. It is not intended to require a partial payment or payment of interest where a contractor simply fails to meet contractual obligations and delivers only part of a contract order." (emphasis added)
>
> S. Rept. 97-302, pp. 7-8.

This legislative history makes an extremely clear and convincing argument that the statute *does* include progress payments and all agencies must give that intention effect in their transactions with contractors.

However, whatever the reason--budget deficits, high interest rates, inflation--cost is the performance criteria that is currently of greatest concern to the government. This has led some in the Office of Management and Budget, citing the Prompt Payment Act as a "cash management" tool, to claim that application of the Act to construction progress payments would increase the cost of federal construction by forcing agencies to pay contractors earlier than is currently the practice. By this reasoning, the government is asking the construction industry--primarily small businesses--to help finance its construction.

Construction contractors are builders, not bankers. And when the government forces construction contractors to act as bankers, it will pay dearly for that service.

Late payment has forced many capable contractors to increase bids to the government in order to keep going until they are paid. Contractors do not have sufficient capital or borrowing power to cover delayed payments. Contractors, of necessity then, must recoup a portion of the negative cash flow created by late payments by increasing their prices to the government. Thus, it would seem that the government could reduce the cost of construction projects simply by paying its bills promptly.

Thus, ASA believes that Congress should take action to clarify its intent that the Prompt Payment Act applies to construction progress payments. ASA further urges Congress to exercise its oversight authority to assure that the federal government issues regulations to comply with its intent.

Retainage

In order for the Prompt Payment Act to be truly effective for the construction industry, it must also legislatively mandate current federal policy on retainage.

Retainage is the practice of holding back a stated percentage, usually 10 percent, from each progress payment to be paid upon completion of either the contractor's work or completion of the entire project. Thus, as the contractor completes 100 percent of each segment of the contract, he receives only 90 percent of the agreed price for such completion. The retained monies may be held for months, or even years, even though the contractor's work has been completed and accepted by the construction project's owner.

The practice of retainage was, in fact, an institutionalized form of seriously delayed payment which caused increasing pressure on contractors and higher costs to the customer. In an era of ever rising interest rates, retainage had become a costly and fruitless tradition.

After a strong interest in eliminating the practice of withholding retainage was shown by the Senate, the Office of Federal Procurement Policy issued Policy Letter 83-1, "Withholding of Funds from Construction Contracts Progress Payments", in May 1983. That policy letter declared that "retainage should not be used as a substitute for good contract management" and that decisions to withhold retainage must "be made by contracting officers on a case-by-case basis."

On May 30, 1986, after more than three years, OFPP issued a regulation implementing Policy Letter 83-1. As a result of the regulation, all federal construction contracts signed on May 30, 1986 or later, require that "if the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full.'

ASA believes this policy now needs to be embodied in law to ensure its ongoing presence in federal contracting procedures.

Prompt Pay for Subcontractors

As noted above, since the Prompt Payment Act took effect in October 1982, the federal government's payment practices have improved dramatically.

But one thing has not improved--that is, the payment of subcontractors on federal construction.

Despite the example set by the federal government, many prime contractors have not followed suit in their dealings with subcontractors.

Subcontractors depend on the cash flow generated by payments on account to meet their payrolls and loan payments and to meet suppliers. Yet some prime contractors take 90, 120 or more days to pay their bills.

Fifty years ago the general contractor engaged to construct a building performed most of the work with his own forces, hiring craftsmen and tradesmen directly on his payroll for specialized building tasks. A system of payment grew naturally out of this arrangement: the owner paid the general contractor the amount due and the disbursement of funds to other parties, if any, was then the general contractor's responsibility.

Today, most general contractors perform only a small fraction of actual construction. On federal government projects, that percentage is usually less than 20 percent. Instead, work is subcontracted to firms that specialize in particular fields.

Now that subcontractors provide by far the majority of onsite labor and materials, the traditional payment system is creating cash flow problems for those two and three steps down the payment process as those higher on the ladder divert funds for other business or personal uses thus delaying payment to those who actually perform the work.

The net result is that construction subcontractors and suppliers are often paid at a slower rate than the rate at which the owner advances funds for a project.

Subcontractors' payment problems are perhaps more severe on federal construction projects than on private or other public work because of the exaggerated extent to which some agencies carry the principle of ignoring the existence of subcontractors in the absence of privity of contract.

Private owners are often quite mindful of the need for payment of subcontractors to assure performance and avoid liens. In addition, thirteen states have laws which designate moneys paid to prime contractors as trust funds and make it a criminal offense for a prime contractor to use the portions of these funds owed to subcontractors for any purpose other than payment of the subcontractors.

Some states that received reports that subcontractors were not being paid in a timely manner after enactment of their state prompt payment laws, passed amendments to their prompt pay laws requiring prime contractors on public work to pay promptly their subcontractors or face interest penalties similar to those faced by the state if it fails to pay its bills (See Attachment A).

At the federal level, subcontractors have only two avenues to resolve the lack of payment (1) a complaint to the contracting officer about the prime contractor's failure to pay after he has certified payment; and (2) a suit against the payment bond required under the Miller Act.

Certification of Payment. Several of the civilian agencies, including the General Services Administration and the Veterans Administration, require that a prime contractor:

> ". . . prior to receiving a progress or final payment . . . shall submit to the Contracting Officer a certification that the Contractor has made payment from proceeds of prior payments, or that he will make timely payment from the proceeds of the progress or final payment then due him, to his subcontractors and suppliers in accordance with his contractual arrangements with them."

Although the "Certification of Payment" requirement is a step in the right direction, there is no follow-up to assure its enforcement.

Even if a subcontractor complains about lack of payment, the most a contracting officer will usually do is to call the prime contractor and strongly suggest that payment be made. At this point, the prime contractor can, and usually does claim that the "contractual arrangement" with his subcontractors do not require payment at that time. The contracting officer has no way of knowing otherwise.

Even if the contracting officer desires to pursue the problem, he has no effective enforcement mechanism. Although a prime contractor who signed the "certification of payment" and then failed to pay his subcontractors is, in theory, defrauding the government, it is unlikely that the Department of Justice will file suit for the simple reason that the government has not suffered a loss.

Finally, it should be noted that even the "certification of payment" protection is not available on Department of Defense jobs.

Miller Act. In lieu of granting lien rights on federal projects, Congress enacted the Miller Act which, in addition to requiring a performance bond to guarantee completion of the project, requires a payment bond. The purpose of the Miller Act payment bond is to protect all persons supplying labor and material on United States government projects where lien rights are unavailable.

The Miller Act has not lived up to the expectations of Congress. It is too costly and time-consuming for the small subcontractor to pursue.

Even if the subcontractor decides to file suit under the Miller Act, he can only do so within 90 days from the date on which he last performed work. Thus, the subcontractor has no recourse under the Miller Act for periodic progress payments unless he stops work on the project--an action that, presumably, the government would discourage.

In any event, the resulting delay in payment for months or even years can easily bankrupt a subcontractor.

Small Business and Federal Procurement Competition Enhancement Act. In 1984, Congress recognized the plight of small subcontractors in the "Small Business and Federal Procurement Competition Enhancement Act" (Public Law 98-577).

That Act states that it is:

> ". . . the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business

> concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals."

Neither OFPP nor the individual agencies have taken action to implement this Act.

Thus, ASA believes it is time for Congress to take steps to assure the timely payment of the federal government's subcontractors. We believe it is time for Congress to follow the lead established by 12 states and enact legislation that would require a prime contractor on federal work to pay his subcontractors within seven days of his receipt of payment from the federal government or face interest penalties identical to those faced by the federal government under the Prompt Payment Act. Such legislation should require the prime contractor to make adjustments, if any, in the subcontractor's pay request at the time of certification.

ASA has prepared such a proposal for your consideration (See Attachment B).

Although at first this proposal may be regarded as an intervention into a contractual relationship between other parties, it should be recognized that the prime contractor is only a conduit for transmittal of payments from the federal government to those who have actually performed the work or supplied the material.

The money belongs to the government until it is paid to the prime contractor, and thereafter it belongs to the subcontractors and suppliers, except for that portion earned specifically by the prime contractor. The federal government has every right to be concerned that such payments are paid.

ASA believes that seven days is sufficient time for a prime contractor to pay his subcontractors. After all, the only thing the prime contractor has to do is write a check. He has certified to the government that the subcontractor has completed his work before incorporating the subcontractor's billing into the contractor's billing to the federal government.

If full payment has not been earned by a subcontractor because of poor performance, the prime contractor should not have certified to the completion of such work in his billing to the government. Thus, the government, not the prime contractor, should be holding all unearned payments until they have been earned.

Seven days is the maximum standard for subcontractor payment used in the private sector.

The American Institute of Architects (AIA) Document A401, Standard Form of Agreement Between Contractor and Subcontractor (1978 edition), provides for such payments to be made within three days after receipt of payment by the prime contractor (See Attachment C).

The Associated General Contractors of America (AGC) Document No. 600, Subcontract for Building Construction (August 1984), provides for such payments to subcontractors within seven days after receipt of payment by the prime contractor (See Attachment D).

So does a recently adopted joint policy statement of ASA, AGC and the Associated Specialty Contractors (See Attachment E).

As noted above, contractors are builders, not bankers. And when contractors, at any tier, are paid late, the government will pay--directly or indirectly.

When subcontractors believe they will be paid late, the prime contractor and thus the government will receive higher bids on its projects, in some cases substantially over estimate.

On projects already under contract where little can be done by the subcontractor to alleviate unanticipated expenses caused by late payments, the cost to the government may take the form of delay. A subcontractor who has lost most of his profit expectation in a job but who still has a lot of work to complete, poses another kind of problem to the government.

A subcontractor cannot be expected to work for nothing and the government gets no "bargain" when a subcontractor is precluded from earning a reasonable profit.

ASA's prompt payment for subcontractors proposal would not require the appropriation of a single penny from the U.S.

Treasury. It would put an end to adversarial job-site relations created by slow or no pay. And it would give many small subcontractors the kind of boost they so desperately need.

ASA urges Congress to seriously consider the plight of the subcontractor on federal construction and to pass legislation to require federal prime contractors to pay their subcontractors in a timely manner.

Summary

Although the federal government's payment practices have improved dramatically since implementation of the Prompt Payment Act in October 1982, ASA continues to receive reports of problems. These include:

--failure of federal agencies to pay their bills promptly;

--failure of agencies automatically to pay interest owed when bills are paid late; and

--failure of agencies to notify contractors when their invoices are incorrect.

ASA is particularly concerned about the claim by federal agencies that the Prompt Payment Act does not apply to construction progress payments. We urge Congress to clarify the statute through additional statutory language.

ASA further urges Congress to once again consider legislation to embody into law the federal government's practice concerning retainage in construction in order to ensure its ongoing presence in federal contracting procedures.

S.2479, the "Prompt Pay Amendments of 1986," introduced by Senator Paul Trible (R-Va.) with 20 cosponsors, would address the above problems. ASA supports this legislation.

However, there is one issue S.2479 does not address--the failure of prime contractors to pass the benefits of the Prompt Payment Act on to their subcontractors.

Because subcontractors provide by far the majority of onsite labor and materials on federal construction, slow pay from the prime contractor to those subcontractors creates numerous problems, including increased costs for the government, delays in construction, and a general adversarial environment on the project.

Thus, ASA urges Congress to enact legislation that would require a prime contractor on federal work to pay its subcontractors in a timely manner or face penalties identical to those faced by the federal government under the Prompt Payment Act.

ASA asks Congress to seriously consider and take appropriate action on these issues as quickly as possible. ASA's members and resources are available to help in whatever way is necessary to expedite such legislation.

Attachment A

States with Prompt Pay for Subcontractors

Connecticut - requires prime contractors on public work to pay subcontractors within 45 days after the prime contractor receives payment. Subcontractors may collect interest penalties of one percent per month.

Florida - requires prime contractors on public work to pay subcontractors within seven working days after the prime contractor receives payment. Subcontractors may collect .5 percent interest per day up to 15 percent.

Hawaii - requires prime contractors on public work to pay subcontractors within ten days after the prime contractor receives payment. No interest penalty is specified.

Louisiana - requires prime contractors on both public and private work to pay subcontractors within 21 days after the prime contractor receives payment. Subcontractors may collect .5 percent interest per day up to 15 percent.

Mississippi - requires prime contractors on both public and private work to pay subcontractors within 15 days after the prime contractor receives payment. Subcontractors may collect interest up to 8 percent.

Nevada - requires prime contractors on private work to pay subcontractors within 15 days after the prime contractor receives payment. Subcontractors may collect interest equivalent to the prime rate plus two percent.

North Carolina - requires prime contractors on public work to pay subcontractors no more than seven days after the prime contractor receives payment. Subcontractors may collect interest penalties of one percent per month.

-continued-

North Dakota - requires prime contractors on public work to pay subcontractors no more than 30 days after the prime receives payment. Subcontractors may collect interest penalties of 1.75 percent per month.

South Dakota - requires prime contractors on public work to pay subcontractors within seven days after the prime receives payment. Subcontractors may collect interest penalties of one percent per month.

Tennessee - requires prime contractors on public work to pay subcontractors within 30 days after the prime contractor receives payment. Subcontractors may collect interest penalties of one percent per month.

Texas - requires prime contractors on public work to pay subcontractors within ten calendar days after the prime contractor receives payment. Subcontractors may collect interest penalties of one percent per month.

Utah - requires prime contractors on both public and private work to pay subcontractors within 30 days after the prime contractor receives payment. On public work, subcontractors may collect interest penalties of 15.5 percent after 45 days. On private work, subcontractors may collect interest penalties of 18 percent after 45 days.

99th Congress
2nd Session

Attachment B

A BILL

To require prime contractors to pay interest on overdue payments to their subcontractors on contracts with federal agencies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Prompt Payment of Government Subcontractors Act."

INTEREST PENALTIES ON LATE PAYMENTS

SEC. 2(a). Any prime contractor who acquires property or services from a subcontractor for the purpose of fulfilling a contract with a Federal agency but who does not make payment to the subcontractor within seven days of receipt of payment from the agency shall pay an interest penalty to such subcontractor in acccordance with this section on the amount of the payment which is due.

(b) Interest penalties on amounts due to a subcontractor under this Act shall be paid to the subcontractor for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made.

(c) Interest shall be computed at the rate determined by the Secretary of the Treasury for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611). The Secretary of the Treasury shall publish each such rate in the Federal Register.

(d) Any amount of an interest penalty which remains unpaid at the end of any thirty day period shall be added to the principle amount of the debt and thereafter interest penalties shall accrue on such added amount.

(e) Nothing in this section shall prevent a prime contractor, at the time of application for payment and certification to the cognizant Federal agency, from withholding

(i) payment to the subcontractor for any of the following reasons attributable to the subcontractor's performance:

(1) unsatisfactory job progress;

(2) defective work;

(3) disputed work;

(4) third party claims, filed or reasonably expected to be filed;

(5) failure to make timely payments for labor, equipment or materials;

(6) damages suffered by the prime or another subcontractor;

(7) reasonable expectation that the subcontractor's work cannot be completed for the unpaid balance of the contract price as from time to time amended; or

(ii) a reasonable amount of retainage, provided, however, that in no event shall the percentage of retainage withheld from the subcontractor exceed the percentage of retainage withheld by the Federal agency from the prime contractor.

(f) In no case shall an obligation to pay such interest penalties be construed to be an obligation of the United States.

(g) "Subcontractor," as used herein, means any supplier, vendor or firm that furnishes supplies or services to or for a prime contractor to the federal government.

EFFECTIVE DATE

SEC. 3. This Act applies to the acquisition of property or services on or after the beginning of the first calendar quarter which begins more than ninety days after the date of enactment of this Act.

Attachment C

THE AMERICAN INSTITUTE OF ARCHITECTS

AIA Document A401

SUBCONTRACT

Standard Form of Agreement Between Contractor and Subcontractor

1978 EDITION

Use with the latest edition of the appropriate AIA Documents as follows:

A101, Owner-Contractor Agreement — Stipulated Sum
A107, Abbreviated Owner-Contractor Agreement with General Conditions
A111, Owner-Contractor Agreement — Cost plus Fee
A201, General Conditions of the Contract for Construction.

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION

This document has been approved and endorsed by the American Subcontractors Association and the Associated Specialty Contractors, Inc.

12.4 PAYMENTS TO THE SUBCONTRACTOR

12.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall pay the Subcontractor each progress payment and the final payment under this Subcontract within three working days after he receives payment from the Owner, except as provided in Subparagraph 12.4.3.

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Attachment D

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

SUBCONTRACT FOR BUILDING CONSTRUCTION

5.2.5 TIME OF PAYMENT. Progress payments to the Subcontractor for satisfactory performance of the Subcontractor's Work shall be made no later than seven (7) days after receipt by the Contractor of payment from the Owner for such Subcontractor's Work.

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is Agreement has important legal and insurance consequences. Consultation with an attorney and insurance consultant is encouraged wi spect to its completion or modification and particularly when used with other than AIA A201 General Conditions of the Contract for Construction, August 1976 edition.

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Attachment E

Joint policy statement 1: Prompt payment

Undue delays by owners, architects/engineers, general contractors, subcontractors and sub-subcontractors in processing amounts due to general contractors, subcontractors, sub-subcontractors and suppliers, or in making timely payments of these amounts, impose hardships and improper financing burdens on the contractors and suppliers and amount to extensions of credit by the contractors and suppliers to their respective higher tiers.

Accordingly, it is the policy of the Associated General Contractors of America, the American Subcontractors Association and the Associated Specialty Contractors that all payments must be made on all contracts promptly. This should include payment for all labor, services and materials stored on the job site or other approved storage sites as of the closing date of requisitions. This applies to both progress payments and final payments.

All local chapters of AGC, ASA and ASC are urged to make efforts, singly or cooperatively where possible, to persuade all owners, architects/engineers, general contractors, subcontractors and sub-subcontractors to adopt and adhere to this policy in the conduct of their business.

The following schedule of billings, certificates and payments by various participants in the construction process is recommended.

The schedule assumes normal trade contract terms allowing monthly progress payments for work performed and materials suitably stored through the end of the month. This schedule does not refer to payments to suppliers who are not subcontractors.

It is important to note that along the sequence of events, any recipient of a payment request who takes exception to an item of billing should immediately contact the initiating party by telephone and attempt to resolve the matter. Failing resolution, the party taking exception should notify the other party in writing the reasons for the action.

Day of Calendar Month	Event
20th	Sub-subcontractors request payment from subcontractors.
25th	Subcontractors request payment from contractor, incorporating the sub-subcontractor's request in the billing.
1st	Contractor submits to the owner's representative an itemized application for payment with the necessary supporting data, covering the monthly progress of the entire contract being performed.
5th	The owner's representative issues the certificate for payment to the owner for the amount requested.
10th or sooner	The owner makes payment to the contractor for the amount certified by the owner's representative.
No More Than 7 Days After Receipt	The contractor pays each subcontractor the amount received from the owner on his account promptly but not later than seven days after receipt.
No More Than 7 Days After Receipt	Each subcontractor pays each subcontractor the amount received from the contractor on his account promptly but not later than seven days after receipt.

The schedule should be adjusted by making appropriate billings and payments on the last working day prior to any listed Saturday, Sunday or holiday. It is also recommended that collection efforts be commenced immediately following the day any payment due was not paid.

Senator TRIBLE. Mr. Sullivan, your detailed statement will be made a part of the record. I think we should impound those dollars to make them a part of the record. [Laughter.]

Mr. SULLIVAN. You can have all the ones in the middle. [Laughter.]

Senator TRIBLE. I thank you for your testimony, gentlemen.

Mr. Spears, you have heard the testimony of Mr. Buttrum and Mr. Sullivan. Do you want to take another crack at the issue on which you all have some dispute?

Mr. SPEARS. Well, I feel like I am at home being beat on the head by two subcontractors here this morning. I will do my best, Senator Trible.

It is a very delicate situation, this payment with subcontractors. As Mr. Sullivan and I were talking even before you came back in, it is like singing to a choir here. Probably the members here are not the abusers. There is no doubt that there are probably general contractors that are abusers of this.

Our problem with making it mandatory in law is that it gets Government in our business. I think this administration, and I have heard you many times say that this is our intent, to try to get Government out of our business. We feel like the marketplace, a free marketplace, will take care of those abusers; whereas, it is pretty hard to take care of an abuser when he is a bureaucrat and you have to deal with him and there is no way to resolve that problem. That is why we are here about the Prompt Payment Act.

As far as a relationship between subcontractors and the general contractor, we feel like that the marketplace will take care of that problem eventually. We feel like that the organizations represented here this morning are working very diligently for their organizations and their members to resolve this payment problem. In most cases I believe that it is being resolved.

We have been in business, Shirley Construction has been in business since 1955. I dare say that we would not be here today if we did not pay our bills promptly. You soon become suspect. If you do not pay your bills, you do not receive the right quotes, you get inflated quotes, and therefore you are not able to get the projects that you need to get in the competitive market.

This is where we think it ought to stay. It is a free marketplace. We feel like the Government has enough taking care of its own business without getting involved in disputes, and we feel like if you make this a mandated policy, this is what will happen. Right now the ROICC officers, we do a lot of Navy work down in the Hampton Roads area and frankly the ROICC officers do not want to get involved in disputes between subcontractors and general contractors. A lot of time this was where payment, prompt payment comes into play is because of disputed claims in the contract.

We feel like you want to look to us as a single contract identity. It has worked in the past, and we feel like it will continue to work in the future.

Senator TRIBLE. Mr. Buttrum, would you have thoughts to add? You led off, but you have heard from Mr. Spears and Sullivan since then.

Mr. BUTTRUM. Obviously I disagree. I have cited at least two cases. I could give you four or five more in our own case that point out that the problem is not correcting itself. I would point out that it is not a private contract; it is a Government contract which makes it public. I believe at this point that the subs will probably go broke waiting for the problem to rectify itself in the marketplace, and that is why I am here.

I would also point out that again there are contract provisions that are flowed down through to the subs, and I do not understand why one more cannot be. There is no way for a subcontractor at this point to enforce an obligation from the prime contractor to pay the sub other than through the Miller Act, which is not practical nor expeditious.

Litigation is not practical or expeditious. There is no way to get the money. I cited in my testimony $242,000 being owed us, some of which was over 330 days. If you have an idea of how to get it, I would like to hear it, because I have been trying. Parenthetically, Swanson-Nunn is also a member of the AGC and as a member of the AGC I would disagree with that. [Laughter.]

Senator TRIBLE. You would advance your testimony as a minority position.

Mr. BUTTRUM. Yes, sir.

Senator TRIBLE. Well, this is obviously a problem. I know it is one that the whole subcontractor community seems to wrestle with. Mr. Spears has suggested that the forces of the marketplace tend to impose discipline, and that a prime contractor that fails to honor his commitments in a timely fashion has difficulty transacting business in an effective and an efficient way, and therefore is punished by the marketplace. That obviously is not your experience.

Mr. Sullivan.

Mr. SULLIVAN. I take a little bit of exception to AGC's position that we are asking contract officers to settle disputes, et cetera, on the jobsite. What we are asking for is the prompt pay to pass through to the subcontractors. We are not asking the Government to administer this, because we are asking for the statute within the law that we would have to file suit under the statute in the law just like we file suit under the Miller Act. The Government does not intervene in a dispute with the general contractor involving the Miller Act. So I do not see where we are getting into privity of contract or that we are asking the Government to administer the dispute.

Senator TRIBLE. What about the payment of interest penalties? As you know, that is a part of the Prompt Payment Act. Would you propose that interest penalties be required?

Mr. SULLIVAN. Yes, at the same rate that the Federal Government would pay them to the prime contractor, but it would be settled by the court, not by the Federal Government.

Senator TRIBLE. Now who would you have pay the interest payments?

Mr. SULLIVAN. If the general contractor or prime contractor has been paid in a timely manner by the Government within his timeframe and he misuses the funds or uses the funds for other than paying his subcontractor, then the court should find that the prime contractor should pay the interest. And it goes all the way through.

We are not stopping at the first-tier subcontractor, we are going all the way to the supplier.

Senator Trible. The concern I would have is that those costs would inevitably be passed on to the Government and you would have the Government and the taxpayers paying interest penalties for the misconduct of others.

Mr. Sullivan. Are we not passing these penalties on to the Government now by adding the anticipated interest due to delay in payment on a Government project?

Senator Trible. Indeed you are, but the Government is responsible for those delays directly today. That is the Government's failure to pay.

Mr. Spears. In most contracts, both parties, the general contractor and the subcontractor, go into a relationship with both eyes open, you know, wide open. To me, the subcontractor should read the payment clause. If the payment clause does not include a prompt payment provision, then he has the right to demand it. And if you put in there that he also has the right to ask for the interest penalty. Most standard subcontractors, as I alluded to in my formal statement, most of those provisions are now in those standard provisions.

To me, Senator, the marketplace is the place that these things need to be taken care of. If you get Government involved, and I think that they will eventually; if not, I do not think we are going about it the right way, and I think it ought to be up to us to get our heads together to see that it is. But to make it law, I feel like eventually it will wind up costing the Government money instead of saving it money.

Senator Trible. Mr. Buttrum.

Mr. Buttrum. Mr. Chairman, I will say it again. There is no practical way at this point in time for a subcontractor to get money from the prime contractor after he has received prompt payment from the Government. That is the issue. The free marketplace is great. Down the road, you know, I will never do business with the same prime contractor that owes me money now. The Government contracting officer out in Kansas City says he has no jurisdiction.

The Miller Act takes years to litigate. Filing suit takes years to litigate. In the meantime, I am stuck with 242,000 dollars' worth of cash out of my pocket. That is the issue.

Mr. Spears. I would say one last thing, and then I will not say anything else. If the general contractor is doing that, he is going to do it against the law anyway. If the general contractor withholds money and there is not a dispute, he is going to be holding it whether there is a law passed or not.

There are, unfortunately, you are going to come across these things, and there is going to have to be litigation. There is going to have to be arbitration. Those things, our association has tried to make—or is trying to make easier to happen. To interject a third party such as a Government entity to me would be opening a can of worms, and it would very costly to all the parties.

Senator Trible. Gentlemen, the committee will carefully consider the concerns, Mr. Buttrum, that you and Mr. Sullivan and others have expressed. I do not know how they will be addressed in this legislation. Perhaps they will, perhaps they will not. But it is something that we do need to pursue, and we will do that thoughtfully.

Mr. **Spears**. We encourage that.

Mr. **Sullivan**. Yes.

Senator **Trible**. I would invite you to stay in touch, and we will do the same. Thank you for your testimony today.

We will recess until about 1:45 to give everyone a chance to go and come. We will resume promptly at 1:45.

[Whereupon, at 12:45 p.m., the hearing was recessed, to reconvene at 2:00 p.m., this same day.]

AFTERNOON SESSION

Senator **Trible**. The hearing will once again resume. We are going to jump out of logical sequence here, gentlemen. I hate to hit you with a double whammy here today, with both an afternoon session and then ask you to step aside for a minute, but I understand that Mr. Louis Hays has a group of his regional coordinators here from around the country, and if we could accommodate him at this point I would like to hear his testimony, and then we will move forward very quickly.

Mr. Hays is the Associate Administrator for Operations of the Health Care Financing Administration for the Department of Health and Human Services, Washington, DC.

Mr. Hays, you are most welcome.

STATEMENT OF LOUIS B. HAYS, ASSOCIATE ADMINISTRATOR FOR OPERATIONS, HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES, WASHINGTON, DC, ACCOMPANIED BY JOHN BERRY, DIRECTOR, BUREAU OF PROGRAM OPERATIONS, HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. **Hays**. Mr. Chairman, I am tremendously grateful for accommodating my schedule, and you are absolutely right. I do have a number of people who are critical to solving some of the problems that we will be discussing here this afternoon waiting for me back in Baltimore.

Senator **Trible**. Well, we do not want to impede progress.

Mr. **Hays**. Thank you.

I am accompanied this afternoon, Mr. Chairman, by Mr. John Berry on my right who is the Director of our Bureau of Program Operations.

If I might, also, Mr. Chairman, ask that my full statement be placed in the record and I will excerpt from my full statement for purposes of our presentation here this afternoon.

Senator **Trible**. All right, Mr. Hays, your full statement will be made a part of the record.

Mr. **Hays**. Thank you, very much.

Mr. Chairman, there has been considerable controversy in recent months concerning how long it takes to pay Medicare claims. When I came to the Health Care Financing Administration a month ago as part of the new management team headed by Dr.

William Roper, our new HCFA Administrator, this issue was one of our highest priorities.

Although on average claims are being processed in less than 30 days nationally, payment time had increased beyond 30 days for certain contractors, and there were projections that the payment cycle could increase to 35 to 36 days by the end of this current fiscal year. Because of our concern over these projections, and in order to correct the unevenness in timeliness of payment, we recently released additional funds to assist our Medicare contractors in approaching a 27-day payment cycle.

Before I elaborate on this new development, I would like to discuss the reasons why payment time lengthened. Our initial budget request for the Medicare contractors for this fiscal year was tight, but we thought adequate to do the job given our best projections of Medicare claims volume and associated costs.

Our appropriations request to the Congress last year assumed that the contractors would process 61.1 million claims under part A of the Medicare Program, and 282.4 million claims under part B of the Medicare Program. This represented an increase in workload of 6.8 and 10.5 percent respectively. However, we currently estimate that we will receive an additional 2.9 million claims under part A and 17.9 million claims under part B of Medicare.

In addition to the budget, there are two other factors that led to an increase in payment time for certain claims. First, consistent with developments throughout the health care marketplace and the necessity to ensure that trust fund dollars are spent appropriately, there is an increased concern in the Medicare Program about medical review and third-party liability. New medical necessity reviews and efforts to identify situations and collect payment where Medicare is not the primary payer require additional claims processing time, particularly in cases where the provider of medical services has not accurately submitted the claim.

Second, our Medicare contractors will process over 360 million claims in this fiscal year from over 17,000 institutions, 450,000 physicians, 75,000 suppliers, and 31 million beneficiaries. Consequently, operational problems impacting a relatively small percentage of claims in a system this large will affect a substantial number of providers and beneficiaries. A recent example of this type of problem is the slowdown in payment to home health agencies resulting from the introduction of new medical review forms.

The increase in Medicare payment time has generated discussions about Medicare's relationship to the Prompt Payment Act. The Medicare benefit payments made by our so-called fiscal intermediaries and carriers under part A and part B of the Medicare Program are not now covered by the Prompt Payment Act and we do not believe that it would be desirable for them to be covered.

Now to elaborate on my earlier remark, we have directed our Medicare contractors to process 95 percent of all so-called "clean claims" within about 27 days. This means that we will pay essentially each and every clean claim in that timeframe. By "clean claims" we mean claims that can be processed upon receipt, that do not require further development and/or correction. We estimate that roughly 70 percent of all Medicare claims fall under this definition of "clean claim."

Although we are committed to paying clean claims in about 27 days, there are significant operational issues concerning the 30 percent of claims that require further development. These issues argue against incorporating Medicare into the Prompt Payment Act. The question is: Would a claim that requires further development be considered a "proper invoice"?

As I stated, roughly 30 percent of all Medicare claims do require development for a number of reasons. The claim may be missing information or otherwise not be completed properly. The claim may also require development for reasons I mentioned earlier having to do with either medical necessity review, or third-party liability, and I would like to explain briefly what that means.

Contractor medical review activities saved the Medicare Program $590 million in fiscal year 1985. Each medical review screen addresses a particular utilization problem that has been experienced in the program. Based on the criteria of the screen, individual claims are identified through computer edits for further review by contractor medical personnel.

With respect to third-party liability, initiatives in this area produced program savings of $750 million in fiscal year 1985. These initiatives include review of claims from the so-called "working aged." That is, older individuals who are either still employed and receiving health benefits through work, or are the spouse of an employed individual who has health insurance coverage. Other potential areas of third-party liability are where liability insurance or workmen's compensation cover a beneficiary's medical expenses resulting from an accident.

Clearly when claims are determined to involve a potential for third-party liability, payment from the program, if any, can be delayed. Thus, both our medical review and third-party liability activities serve as effective safeguards to ensure that program dollars are expended only for the services and under the circumstances provided for in the Social Security Act.

These activities by their very nature are personnel and time-intensive. Any requirement that claims needing this kind of development be processed in the same time frames as so-called clean claims would necessitate a curtailment of these payment safeguard activities with a resulting loss in program savings.

Now although we do not feel that the 27-day timeframe is possible for the 30 percent of these other claims that do require further development, we are committed to developing appropriate standards for processing these types of claims. Our goal is to reduce the uncertainty facing providers, physicians, suppliers, and beneficiaries in regard to the amount of time they must wait to be paid.

In summary, we do not believe that Medicare should be covered by the Prompt Payment Act. We are moving toward a payment cycle for clean claims of about 27 days and, in order to accomplish this goal, we have released the $15 million contractor contingency fund.

We have very legitimate reasons for sometimes taking longer with certain types of claims, but even with those we want to do better than we have.

Also, in a system as large as ours, there are bound to be mistakes from time to time that can cause problems. When we find those mistakes, we are committed to correcting them as quickly as possible.

Finally, in order for the Medicare Program to function properly, we have to maintain the trust of our beneficiaries, providers, physicians, and suppliers. One of the elements of this trust is the knowledge that payment for services will be predictable and reliable. We have taken steps to stabilize the time for paying claims. We believe that these actions will assure the continued confidence of the public in the Medicare Program.

With that, Mr. Chairman, I would be pleased to address any questions that you might have at this time.

[The prepared statement of Mr. Hays follows:]

DEPARTMENT OF HEALTH & HUMAN SERVICES

Washington, D.C. 20201

STATEMENT OF

LOUIS B. HAYS
ASSOCIATE ADMINISTRATOR
FOR OPERATIONS
HEALTH CARE FINANCING ADMINISTRATION

BEFORE THE

SMALL BUSINESS COMMITTEE
UNITED STATES SENATE

JUNE 19, 1986

My name is Louis B. Hays and I am the Associate Administrator for Operations of the Health Care Financing Administration (HCFA). I am pleased to be here today to discuss HCFA's policy in regard to the payment cycle of our Medicare contractors and the question of the applicability of the Prompt Payment Act to the Medicare program.

BACKGROUND

Before I discuss these issues, I would like to provide a brief overview of the Medicare contractor program. In 1965, when Medicare was enacted, Congress adopted an administrative structure which was compatible with the existing practice within the private health insurance industry. As a result, the Federal Government contracts with private sector organizations to process payment to providers, physicians, suppliers and beneficiaries. These organizations are known as intermediaries under part A, the hospital insurance portion of Medicare, and carriers under part B, the supplementary medical insurance portion.

At present there are 91 contractors in the Medicare program - 54 intermediaries, 36 carriers, and one combined intermediary/carrier. Under part A, hospitals and skilled nursing facilities (SNFs) are permitted to nominate a private insurer to act as their intermediary. Home health agenices (HHAs), on the other hand, are assigned by HCFA to regional intermediaries. Claims for services rendered under part A are reimbursed by intermediaries directly to providers.

Under part B, private health insurance organizations are selected by the

FEDERAL GOVERNMENT TO SERVE AS CARRIERS FOR DEFINED GEOGRAPHIC AREAS. PAYMENT CAN BE MADE TO EITHER THE PHYSICIAN, THE SUPPLIER OR THE BENEFICIARY, DEPENDING ON WHETHER OR NOT THE CLAIM WAS ACCEPTED ON ASSIGNMENT. APPROXIMATELY 68 PERCENT ARE PAID TO PHYSICIANS AND SUPPLIERS AND ABOUT 32 PERCENT ARE PAID DIRECTLY TO BENEFICIARIES.

IN ADDITION TO PROCESSING CLAIMS AND MAKING PAYMENTS, INTERMEDIARIES AND CARRIERS REVIEW THE MEDICAL NECESSITY OF CLAIMS SUBMITTED, IDENTIFY SITUATIONS AND COLLECT PAYMENTS WHERE MEDICARE IS NOT THE PRIMARY PAYER, AND RECOVER OVERPAYMENTS WHEN IT IS DETERMINED THAT AN INCORRECT PAYMENT HAS BEEN MADE. FINALLY, BOTH INTERMEDIARIES AND CARRIERS PROVIDE INFORMATION AND GUIDANCE TO BENEFICIARIES, PROVIDERS, PHYSICIANS AND SUPPLIERS ON COVERAGE AND PAYMENT ISSUES.

FOR THE MOST PART, CARRIERS AND INTERMEDIARIES ARE REIMBURSED FOR THEIR COSTS SUBJECT TO STANDARDS ESTABLISHED BY HCFA. FEDERAL FUNDING FOR MEDICARE CONTRACTORS HAS INCREASED FROM $93 MILLION IN 1967 TO $1.0 BILLION NOW REQUESTED FOR 1987. TOTAL ADMINISTRATIVE COSTS OF BOTH HCFA AND THE CONTRACTORS IS NOW APPROXIMATELY 1.6 PERCENT OF TOTAL PROGRAM COSTS. THE RATIO OF ADMINISTRATIVE COSTS TO TOTAL COSTS IS BETTER THAN THAT OF THE MAJORITY OF ORGANIZATIONS PROVIDING HEALTH INSURANCE IN THE PRIVATE SECTOR.

CONTRACTOR PAYMENT CYCLE

THERE HAS BEEN CONSIDERABLE CONTROVERSY IN RECENT MONTHS CONCERNING HOW LONG IT TAKES TO PAY MEDICARE CLAIMS. WHEN I CAME TO HCFA A

MONTH AGO AS PART OF THE NEW MANAGEMENT TEAM HEADED BY DR. WILLIAM ROPER, THE NEW HCFA ADMINISTRATOR, THIS ISSUE WAS ONE OF MY HIGHEST PRIORITIES. ALTHOUGH, ON AVERAGE, CLAIMS ARE BEING PROCESSED IN LESS THAN 30 DAYS NATIONALLY, PAYMENT TIME HAD INCREASED BEYOND 30 DAYS FOR CERTAIN CONTRACTORS AND THERE WERE PROJECTIONS THAT THE PAYMENT CYCLE COULD INCREASE TO 35-36 DAYS BY THE END OF FY 1986. BECAUSE OF OUR CONCERN OVER THESE PROJECTIONS AND IN ORDER TO CORRECT THE UNEVENNESS IN TIMELINESS OF PAYMENT, WE RECENTLY RELEASED ADDITIONAL FUNDS TO ASSIST THE CONTRACTORS IN APPROACHING A 27 DAY PAYMENT CYCLE. BEFORE I ELABORATE ON THIS NEW DEVELOPMENT, I WANT TO DISCUSS THE REASONS WHY PAYMENT TIME LENGTHENED.

OUR INITIAL BUDGET REQUEST FOR THE MEDICARE CONTRACTORS FOR THIS FISCAL YEAR WAS TIGHT, BUT WE THOUGHT ADEQUATE TO DO THE JOB GIVEN OUR BEST PROJECTIONS OF MEDICARE CLAIMS VOLUME AND ASSOCIATED COSTS. OUR APPROPRIATION REQUEST TO CONGRESS LAST YEAR ASSUMED THAT THE CONTRACTORS WOULD PROCESS 61.1 MILLION CLAIMS UNDER PART A AND 282.4 MILLION CLAIMS UNDER PART B. THIS REPRESENTED AN INCREASE IN WORKLOAD OF 6.8 AND 10.5 PERCENT, RESPECTIVELY. HOWEVER, WE CURRENTLY ESTIMATE THAT WE WILL HAVE TO PROCESS AN ADDITIONAL 2.9 MILLION CLAIMS UNDER PART A AND 17.9 MILLION CLAIMS UNDER PART B. THIS INCREASE IN WORKLOAD ABOVE OUR INITIAL PROJECTIONS IS CAUSED BY A NUMBER OF FACTORS, THE MOST SIGNIFICANT BEING A DRAMATIC INCREASE IN CLAIMS FOR BOTH OUTPATIENT SERVICES AND LABORATORY BILLINGS. THE INCREASE IN CLAIMS FOR OUTPATIENT SERVICES APPEARS TO BE AN EFFECT OF THE RELATIVELY NEW PROSPECTIVE PAYMENT SYSTEM FOR MEDICARE, AND THE INCREASED LAB CLAIMS RESULTS

FROM THE DIRECT BILLING PROVISION IN THE DEFICIT REDUCTION ACT OF 1984.

IN ADDITION TO THE BUDGET, THERE ARE TWO OTHER FACTORS THAT LED TO AN INCREASE IN PAYMENT TIME FOR CERTAIN CLAIMS:

o CONSISTENT WITH DEVELOPMENTS THROUGHOUT THE HEALTH CARE MARKET, AND THE NECESSITY TO ENSURE THAT TRUST FUND DOLLARS ARE SPENT APPROPRIATELY, THERE IS AN INCREASED CONCERN IN THE MEDICARE PROGRAM ABOUT MEDICAL REVIEW AND THIRD PARTY LIABILITY. NEW MEDICAL NECESSITY REVIEWS AND EFFORTS TO IDENTIFY SITUATIONS, AND COLLECT PAYMENT WHEN MEDICARE IS NOT THE PRIMARY PAYER, REQUIRE ADDITIONAL CLAIMS PROCESSING TIME, PARTICULARLY IN CASES WHERE THE PROVIDER HAS NOT ACCURATELY SUBMITTED THE CLAIM.

o OUR CONTRACTORS WILL PROCESS OVER 360 MILLION CLAIMS IN FY 86 FROM OVER 17,000 INSTITUTIONS, 450,000 PHYSICIANS, 75,000 SUPPLIERS, AND 31 MILLION BENEFICIARIES. CONSEQUENTLY, OPERATIONAL PROBLEMS IMPACTING A RELATIVELY SMALL PERCENTAGE OF CLAIMS IN A SYSTEM THIS LARGE WILL AFFECT A SUBSTANTIAL NUMBER OF PROVIDERS AND BENEFICIARIES. A RECENT EXAMPLE OF THIS TYPE OF PROBLEM IS THE SLOWDOWN IN PAYMENT TO HOME HEALTH AGENCIES RESULTING FROM THE INTRODUCTION OF NEW MEDICAL REVIEW FORMS.

PROMPT PAYMENT ACT

THE INCREASE IN MEDICARE PAYMENT TIME HAS GENERATED DISCUSSIONS ABOUT MEDICARE'S RELATIONSHIP TO THE PROMPT PAYMENT ACT, WHICH IS THE subject of this hearing. Medicare benefit payments made by intermediaries and carriers are not now covered by the Prompt Payment Act and we do not believe that it would be desirable for them to be covered.

To elaborate on my earlier remark, we have directed our contractors to process 95 percent of all so-called "clean" claims within about 27 days. This means we will pay essentially each and every "clean" claim in that time frame. By "clean" claims, we mean claims that can be processed upon receipt, that do not require further development and/or correction. We estimate that roughly 70 percent of all Medicare claims are "clean".

Although we are committed to paying "clean" claims in 27 days, there are significant operational issues concerning the 30 percent of claims that require further development. These issues argue against incorporating Medicare into the Act. The question is, would a claim that requires further development be considered a "proper invoice?"

Roughly 30 percent of all Medicare claims require development for a number of reasons. The claim may be missing information or otherwise not completed properly. The claim may also require development for reasons I mentioned earlier having to do with either medical necessity review or third party liability.

Contractor medical review activities saved the Medicare program $590

MILLION IN FY 1985. EACH MEDICAL REVIEW SCREEN ADDRESSES A PARTICULAR UTILIZATION PROBLEM THAT HAS BEEN EXPERIENCED IN THE PROGRAM. BASED ON THE CRITERIA OF THE SCREEN, INDIVIDUAL CLAIMS ARE IDENTIFIED THROUGH COMPUTER EDITS FOR FURTHER REVIEW BY CONTRACTOR MEDICAL PERSONNEL.

AN EXAMPLE OF ONE OF OUR MANDATED MEDICAL REVIEW SCREENS IS OUR INITIATIVE IN THE AREA OF PROSTHETIC LENSES. THIS RESULTED FROM A 1985 GENERAL ACCOUNTING OFFICE REVIEW WHICH DETERMINED THAT INADEQUATE GUIDANCE TO THE CONTRACTORS LED TO UNNECESSARY EXPENDITURES FOR PROSTHETIC LENSES. THE GAO RECOMMENDED THAT A UNIFORM SCREEN BE IMPLEMENTED BY THE CONTRACTORS TO IDENTIFY CLAIMS FOR ADDITIONAL REPLACEMENT LENS BEYOND ONE PER YEAR. FOLLOWING THE GAO RECOMMENDATION, CARRIERS NOW SCREEN CLAIMS BEYOND ONE REPLACEMENT LENSE PER EYE PER YEAR. CLAIMS THAT ARE CAUGHT BY COMPUTER EDITS ARE THEN REVIEWED BY THE CONTRACTOR MEDICAL STAFF. NORMALLY, THIS REQUIRES A REQUEST TO THE PROVIDER TO SUBMIT ADDITIONAL INFORMATION TO JUSTIFY THE MEDICAL NECESSITY OF THE CLAIM. ONCE THIS INFORMATION IS RECEIVED AND REVIEWED, A DETERMINATION IS MADE AS TO WHETHER THE CLAIM CAN BE PAID. ALTHOUGH THIS PROCESS ASSURES THAT PROGRAM DOLLARS ARE SPENT FOR MEDICALLY NECESSARY SERVICES, IT DOES RESULT IN CLAIMS BEING PAID BEYOND THE NORMAL PROCESSING TIME FOR "CLEAN" CLAIMS.

INITIATIVES IN THE AREA OF THIRD PARTY LIABILITY PRODUCED PROGRAM SAVINGS OF $750 MILLION IN FY 1985. THESE INITIATIVES INCLUDE REVIEW OF CLAIMS FROM THE SO CALLED "WORKING AGED"; THAT IS, AGED INDIVIDUALS WHO ARE EITHER STILL EMPLOYED AND RECEIVING HEALTH BENEFITS THROUGH WORK OR ARE

THE SPOUSE OF AN EMPLOYED INDIVIDUAL WHO HAS HEALTH INSURANCE COVERAGE. IN A SIMILAR EFFORT, WE LOOK FOR PRIVATE INSURANCE COVERAGE FOR INDIVIDUALS WITH END STAGE RENAL DISEASE DURING THEIR FIRST TWELVE MONTHS ON MAINTENANCE DIALYSIS. THE OTHER AREAS OF POTENTIAL THIRD PARTY LIABILITY ARE WHERE LIABILITY INSURANCE OR WORKMEN'S COMPENSATION COVER A BENEFICIARY'S MEDICAL EXPENSES RESULTING FROM AN ACCIDENT. CLEARLY, WHEN CLAIMS ARE DETERMINED TO INVOLVE THE POTENTIAL FOR THIRD PARTY LIABILITY, PAYMENT, IF ANY, FROM THE PROGRAM IS DELAYED.

THUS, BOTH OUR MEDICAL REVIEW AND THIRD PARTY LIABILITY ACTIVITIES SERVE AS EFFECTIVE SAFEGUARDS TO ENSURE THAT PROGRAM DOLLARS ARE EXPENDED ONLY FOR THE SERVICES, AND UNDER THE CIRCUMSTANCES, PROVIDED FOR IN STATUTE. THESE ACTIVITIES, BY THEIR VERY NATURE, ARE PERSONNEL AND TIME INTENSIVE. ANY REQUIREMENT THAT CLAIMS NEEDING THIS KIND OF DEVELOPMENT BE PROCESSED IN THE SAME TIME-FRAMES AS "CLEAN" CLAIMS WOULD NECESSITATE A CURTAILMENT OF THESE PAYMENT SAFEGUARD ACTIVITIES WITH A RESULTING LOSS IN PROGRAM SAVINGS.

ALTHOUGH WE DO NOT FEEL THAT THE 27 DAY TIME FRAME IS POSSIBLE FOR THE 30 PERCENT OF "OTHER" CLAIMS THAT REQUIRE FURTHER DEVELOPMENT, WE ARE COMMITTED TO DEVELOPING APPROPRIATE STANDARDS FOR THESE TYPES OF CLAIMS. OUR GOAL IS TO REDUCE THE UNCERTAINTY FACING PROVIDERS, PHYSICIANS, SUPPLIERS AND BENEFICIARIES IN REGARD TO THE AMOUNT OF TIME THEY MUST WAIT TO BE PAID.

IN SUMMARY, WE DO NOT BELIEVE THAT MEDICARE SHOULD BE COVERED BY THE

PROMPT PAYMENT ACT. WE ARE MOVING TOWARD A PAYMENT CYCLE FOR "CLEAN" CLAIMS OF ABOUT 27 DAYS. IN ORDER TO ACCOMPLISH THIS GOAL, WE HAVE RELEASED THE $15 MILLION CONTRACTOR CONTINGENCY FUND. WE HAVE VERY LEGITIMATE REASONS FOR SOMETIMES TAKING LONGER WITH CERTAIN TYPES OF CLAIMS, BUT EVEN WITH THOSE WE WANT TO DO BETTER THAN WE HAVE. FINALLY, IN A SYSTEM AS LARGE AS OURS THERE ARE BOUND TO BE MISTAKES FROM TIME TO TIME THAT CAN CAUSE PROBLEMS. WHEN WE FIND MISTAKES, WE WILL CORRECT THEM AS QUICKLY AS POSSIBLE.

CONCLUSION

IN ORDER FOR THE MEDICARE PROGRAM TO FUNCTION PROPERLY, WE HAVE TO MAINTAIN THE TRUST OF OUR BENEFICIARIES, PROVIDERS, PHYSICIANS AND SUPPLIERS. ONE OF THE ELEMENTS OF THIS TRUST IS THE KNOWLEDGE THAT PAYMENT FOR SERVICES WILL BE PREDICTABLE AND RELIABLE. WE HAVE TAKEN STEPS TO STABILIZE THE TIME FOR PAYING CLAIMS. WE BELIEVE THAT THESE ACTIONS WILL ASSURE THE CONTINUED CONFIDENCE OF THE PUBLIC IN THE MEDICARE PROGRAM.

MR. CHAIRMAN, THAT CONCLUDES MY STATEMENT. I WILL NOW BE HAPPY TO ANSWER ANY QUESTIONS THAT YOU MAY HAVE.

Senator **Trible**. Mr. Hays, I thank you for your statement and for your expression of good intentions for ensuring prompt payment of claims.

I would note that Senators Durenberger, Baucus, Chiles, and others will today introduce the Medicare Timely Payment Amendments of 1986 to amend the Social Security Act, and it will bring the Prompt Payment Act requirements to the Medicare Program. It will be referred to the Subcommittee on Health of the Finance Committee, chaired incidentally by Senator Durenberger. So I suspect you will have an opportunity to testify before that subcommittee.

Mr. **Hays**. I certainly hope so.

Senator **Trible**. In your statement you make the assertion that Medicare payments to providers and suppliers by HCFA's fiscal intermediaries are not subject to the provisions of the Prompt Payment Act. What is the basis for that statement?

Mr. **Hays**. Well, Mr. Chairman, I must frankly state that my knowledge of the legal technicalities of the Prompt Payment Act is somewhat limited, and is somewhat beyond my direct jurisdiction.

We have discussed this issue with the Office of the General Counsel in the Department, and I am advised that it is the position of our general counsel's office that the Prompt Payment Act does not apply to Medicare.

Furthermore, it is my understanding that that position is concurred upon by the Office of Management and Budget, which is in effect the cognizant agency within the executive branch with respect to the application of the Prompt Payment Act. At the risk of sounding like the consumate bureaucrat, I would have to say that I am the wrong guy to answer that question.

Senator **Trible**. I think you have answered it properly. At least you pointed in the right direction. I suspect that the basis of that assertion is the opinion of the General Counsel of your Department who has apparently asserted that the Prompt Payment provisions do not apply in that regard.

Submit for the record, if you will, a copy of that opinion, and we will make it a part of the record at this point.

Mr. **Hays**. I will be pleased to do that. We have provided it to staff already, and we will be happy to do that formally for the record.

[Subsequent information was received and follows:]

HEALTH CARE FINANCING & HUMAN
DEVELOPMENTAL SERVICES DIVISION

MEMORANDUM

DATE: February 6, 1984

TO: John C. Berry, Director
Bureau of Program Operations

FROM: Deborah M. Chaskes
Attorney

SUBJECT: Authority to Determine Payment Cycle

In your memorandum of November 21, 1983, you posed a series of questions concerning your authority to establish a uniform payment cycle for Medicare providers. We have determined that title XVIII of the Social Security Act authorizes the payment scheme you propose; however, current regulations will require revision. Your specific questions are addressed in the order presented.

1. Could providers be paid once a month?

Monthly payments are permissible under the Act. Section 1815, as you noted in your memorandum, provides that Part A providers "shall be paid, at such time or times as the Secretary believes appropriate (but not less often than monthly)." There is no periodicity requirement under Part B of the Medicare program. However, section 1842(a) authorizes the Secretary to enter into contracts with carriers "in order to provide for the administration of benefits . . . with maximum efficiency." Therefore, the Secretary's contracts with carriers must provide for the payment of claims at a frequency which promotes "maximum efficiency."

A number of regulatory provisions, particularly those at 42 C.F.R. §§ 404.454(j) and (m), establish biweekly Part A payment cycles. If a monthly payment cycle were adopted, these regulations would have to be amended in accordance with the requirements of the Administrative Procedure Act.

2. Which methods of payment cycle control are permissible under the Act? May separate controls be created for Part A intermediaries and Part B carriers?

In your memorandum, you noted that three methods of intermediary payment cycle control were available to you: (a) payment on a specified date after discharge, (b) payment on a specified date after receipt of the claim, and (c) payment on a time cycle. You identified similar methods of cycle control for carrier payment cycles: payment on a specified date after date of service or receipt of the claim, and payment on a time cycle.

We believe any of the methods of cycle control identified by you would be permissible, as long as the method chosen will ensure that payments are made at least monthly under Part A and with reasonable frequency under Part B. We agree that HCFA may establish different methods of payment cycle control for intermediaries and carriers; the differences in services and billing between Part A and Part B may indicate that a method of cycle control appropriate for one program is not appropriate for the other. Since the Secretary is accorded discretion under section 1815 to determine the timing of Part A payments, and since sections 1833, 1835 and 1842 place no restrictions on the timing of Part B payments, she has authority to establish reasonable methods of payment cycle control for carriers and intermediaries.

3. Could different cycles be established for claims submitted by electronic media and for paper claims in order to provide an incentive to providers and physicians to concert to electronic media?

We believe the Secretary has authority to establishe different payment cycles for claims submitted by electronic media and for paper claims. Under Part A, as discussed above, the Secretary is accorded discretion in determining freqency of payment. If she determines it "appropriate" to pay electronic claims more frequently than paper ones, because such claims can be processed more rapidly and at less cost to the program, section 1815(a) is satisfied. Similarly, under Part B, where the statute places no restrictions on the frequency of payment, the bifurcated payment scheme you propose would be acceptable since it would promote the efficient administration of the program.

4. Does the Prompt Payment Act (P.L. No. 97-177) apply to Medicare benefit payments?

In our opinion, the Prompt Payment Act does not apply to the Medicare program. The Act by its terms applies to "Federal agenc(ies) which acquire(s) property or services from a business concern." § 2(a)(1), 31 U.S.C. § 1801. Although "business concern" is defined broadly in the Act and federal policy issuances (see § 6(2) of the Act, 31 U.S.C.§ 1805; OMB Circular A-125, 47 Fed. Reg. 37322 (Aug. 25, 1982)) and could encompass Medicare providers, it is not clear that HCFA "acquires" goods and services in the sense used in the Act. Beneficiaries, not HCFA, "acquire" goods and services under the Medicare program; HCFA, through its intermediaries and carriers, makes payment on behalf of eligible beneficiaries. Therefore, the Prompt Payment Act would not seem to apply to the Medicare program.

5. Could the Prompt Payment Act be utilized as an indication of Congressional intent for all Federal payment transactions?

We do not believe it is necessary to look outside of title XVIII for indications that Congress intended the Medicare program to be administered in an efficient manner. For example, the requirement in section 1815 that Part A providers be paid no less often than monthly expresses Congress' intent as to the promptness with which Medicare payments should be made.

6. Would the regulations needs to be revised to established the proposed payment cycle?

As mentioned in response to question 1 above, the regulations governing Part A payments would have to be revised if the proposed intermediary payment cycle were adopted. This revision would require adherence to the notice and comment procedure of the Administrative Procedure Act (APA).

Since there are currently no regulations governing the frequency of Part B payments, there is some legal support for establishing the carrier payment cycle through administrative issuances, such as general program instructions. However, for the reasons discussed below, we believe the more prudent approach would be to establish the payment cycle through regulations promulgated in accordance with the requirements of the APA.

Two exemptions to the notice and comment requirements of the APA arguably apply to the carrier payment cycle proposal: the change could be termed either an "interpretative rule" or a "rule[ ] of agency organization, procedure, or practice." 5 U.S.C. §553(b)(A). Each of these exemptions is discussed below.

The test used to determine whether a rule is "substantive," and therefore subject to the APA rulemaking requirements, or "interpretative," and therefore exempt, is generally stated as follows:

> Substantive rules . . . are those which create law, usually implementary to an existing law; whereas interpretative rules are statements as to what the administrative officer thinks the statute or regulation means.

Cabais v. Egger, 690 F.2d 234, 238 (D.C. Cir. 1982) (citations omitted). Applying this test to the payment cycle proposal leads us to conclude that a court would be more likely to deem it substantive than interpretative. The proposal would implement section 1842 of the Act, which authorizes the Secretary to contract with carriers to provide for the administration of benefits "with maximum efficiency." Since this statutory provision does not elaborate on the meaning of "maximum efficiency," establishment of the proposed payment cycle would more likely be said to create law rather than to merely interpret an existing statutory provision.

Alternatively, the proposal could be deemed a rule of agency procedure and therefore exempt from the notice and comment requirements of the APA. Courts tend to construe this exemption narrowly, however: "the exemption . . . does not extend to those procedural rules that depart from existing practice and have a substantial impact on those regulated." *National Association of Home Health Agencies v. Schweiker*, 690 F.2d 932, 949 (D.C. Cir. 1982) (citations omitted). In this case, the proposed payment cycle would be a departure from existing practice, and could arguably be said to have a substantial impact on a number of parties. The carriers as a group would not be significantly affected by the proposed payment cycle; they function primarily as conduits for the payment of benefits and would only adjust their internal practices in response to the change. Part B providers and beneficiaries, however, would be affected by the extended payment cycle; they, in theory at least, would forego the interest that the Trust Fund accrues by delaying payment. Given this impact, it is likely that a court would find that the Secretary should solicit the comments of these parties before she acts.

Senator TRIBLE. One further question. In the statement submitted by the representative of Blue Cross/Blue Shield Association they stated that HCFA's guidance for clean claims would be a 21 to 27 day window. Has the window narrowed to only 27 days?

Mr. HAYS. Well, I became aware of that assertion earlier today. It is my position that current policy is that we will pay so-called clean claims within about 27 days, and that that represents a dramatic improvement over what would have occurred had the status quo been maintained and we had not made a change in the policy and, under those circumstances, we would have seen the average time for payment stretch out to as many as 35 days by the end of this fiscal year.

Our standard is within about 27 days. I guess at this point I am not quite sure what the reference to the 21 to 27 days window is.

Senator TRIBLE. At this point, why do I not excuse you so you can perform your other responsibilities.

Mr. HAYS. Thank you very much, Mr. Chairman. I appreciate that.

Senator TRIBLE. We thank you for your testimony.

Mr. Lordan, since you are ready to proceed, why do we not hear from the Office of Management and Budget. John Lordan is the Deputy Associate Director for Financial Management.

STATEMENT OF JOHN J. LORDAN, DEPUTY ASSOCIATE DIRECTOR FOR FINANCIAL MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET, WASHINGTON, DC

Mr. LORDAN. Mr. Chairman, I would like to submit a statement for the record on S. 2479 from James C. Miller III, Director of the Office of Management and Budget.

I would like to briefly summarize that statement for you, and then respond to any questions you may have on it.

Senator TRIBLE. Mr. Miller's statement will be made a part of the record in full.

Mr. Lordan, you are invited to proceed as you see fit.

Mr. LORDAN. Thank you, Mr. Chairman.

I must say before beginning that sitting through the testimony this morning was an educational if humbling experience. We think the implementation of the Prompt Payment Act is a success story, and it is always discouraging to find how much failure there can be even in something that has been as successful as that act.

Senator TRIBLE. Well, we are always striving for perfection; in spite of our best effort, it often alludes us. That is our quest here. So proceed.

Mr. LORDAN. Let me emphasize that Dr. Miller is firmly committed to helping small business do business with the Federal Government. He recognizes the important role that small businesses play in our Nation's economy. He wants to make it easier, not more difficult, for the small firms to compete for their Government's business. He wholeheartedly endorses the objectives of the Prompt Payment Act, making sure that companies doing business with the Government get paid on time.

Director Miller and Deputy Director Wright have made streamlined payment practices a top priority under the President's Management Improvement Program, Reform 88. They have pushed hard for full implementation of the Prompt Payment Act, and their efforts have paid off.

As a result, the President reported in his annual management report to Congress that 99 percent of the Government's bills are being paid on time. That is a significant improvement from the practices that existed previously, as many of the witnesses this morning have indicated.

Senator TRIBLE. Mr. Lordan, what does 1 percent of the Government's bills represent?

Mr. LORDAN. The total Government's bills, Senator, in the course of a year as I understand it come to about 30 million payments of which 28 to 29 million are the type of payments covered by this act. Obviously a single percent of that is a very substantial number of payments, and that is the area that we want to work on and try to emphasize and see if we can improve.

We recognize that the picture of good payment practices generally is little consolation to those relatively small number of firms who continue to be paid late. We want to resolve all the late payment problems, and we propose to do it through tough management action. Here is what we will do.

First, we will review Circular A-125 to refine the definition of "receipt of a proper invoice" consistent with section 3 of S. 2479. This would limit the amount of time permitted to inspect goods and services to 5 working days unless the contract specifies a longer period. This would overcome the problem of delayed acceptance preventing the start of the payment clock.

Second, we intend to clarify applicability of the act and the circular to construction contract payments and to amounts retained by the government under construction contracts. This clarification will correct for the problem raised by section 5 of S. 2479.

Third, if the record of this hearing demonstrates that the problems are severe enough, we would after consultation with the President's Council on Integrity and Efficiency set up a prompt payment hotline. The hotline would receive complaints about agencies that are abusing the grace period, making payments after the grace period, and not including interest penalties, taking discounts after expiration of the discount period, losing or misplacing invoices, and any other breakdown in the payment system.

The hotline will enable to us to identify payment centers that are not playing fair with suppliers and take corrective action without embarrassing individual suppliers or jeopardizing their business relationship with the agency involved.

Fourth, to assure that appropriate changes to the Federal acquisition regulations are made, our Acting Administrator for Federal Procurement Policy met earlier this week with representatives of the two procurement regulatory councils and directed that the substance of the Prompt Payment Act and OMB Circular A-125 be incorporated into the FAR. He called for a draft regulation to be published within 30 days. If that date is not met by the regulatory agencies, he has pledged to undertake to modify the FAR himself, using authority provided by section 6 of the OFPP Act.

Finally, in response to section 7 of S. 2479, we intend to revise our reporting instructions to the agencies to gather information on the incidence of late payments, whether those payments required interest penalties or not, and the reasons for them and the basis for determining whether a penalty payment was in order.

We believe these steps can be taken with a minimum amount of disruption of the payment system, a system that is working well. We believe they are cost effective and that they go after the problems directly rather than by changing the entire system, and we believe they can be implemented more quickly than legislative change.

Mr. Chairman, you asked that we address the payments of the Health Care Financing Administration in this statement, payments by their providers and suppliers under the Medicare program. We had previously reviewed the testimony given by Mr. Hays here today and agree with it. We would defer to HCFA with respect to the specifics of their payment system.

We appreciate the opportunity to comment on S. 2479, and appreciate this committee's interest in improving the management of agency payment systems. We would be glad to respond to any questions you may have.

[The prepared statement of Mr. Miller follows:]

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

STATEMENT FOR THE RECORD
OF
JAMES C. MILLER III
DIRECTOR
OFFICE OF MANAGEMENT AND BUDGET
COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE
WASHINGTON, D.C.
JUNE 19, 1986

Mr. Chairman and Members of the Committee, this statement presents our views on S. 2479, the Prompt Payment Amendments of 1986. Like the Prompt Payment Act of 1982, which requires the Federal Government to pay its bills on time or pay an interest penalty, this bill seeks to ensure the companies doing business with the Government will be paid on time. This is an objective we can endorse wholeheartedly.

Prompt Payment Act

Early in this Administration, we discovered from reports of the General Accounting Office that over 30 percent of the bills paid by Federal agencies were being paid late. We immediately issued guidance to the agencies to review their payment systems and improve the timeliness of payment.

Later, using authority provided by the Congress in the Prompt Payment Act, we made streamlining payment practices a top priority of the President's Management Improvement Program: Reform '88. We pushed hard for timely payment through implementation of our Circular A-125, "Prompt Payment" and by insisting on special reviews of payment systems under the Federal Managers Financial Integrity Act and Circular A-123, "Internal Control Systems." Our Prompt Payment Task Force and Financial Integrity Task Force followed up consistently and vigorously on implementation.

These efforts have paid off. As the President reported to the Congress earlier this year in his annual management report, over 99 percent of the Government's bills are now paid on time. The Prompt Payment Act works and works well, and we are pledged to make it work even better.

Small Business

We recognize that even one supplier being paid late creates a hardship for that supplier, notwithstanding the general picture of timely payment. Too often those who are paid late are small businesses. Like this Committee we are acutely aware of the need to make it easier -- not more difficult -- for small firms to do business with the Federal Government.

This Administration considers small business the heart of the American free enterprise system. It is their innovation, their creativity, and their willingness to take risks that pumps life into our economy. Small businesses account for over 45 percent of the Nation's GNP and over 80 percent of all new jobs created.

Remaining Problems

The sponsors of S. 2479 have pointed out some very real problems with implementation of the Prompt Payment Act:

- -- delayed acceptance of goods that prevents the start of the payment clock;
- -- intentional abuse of the grace period;
- -- payments made after the grace period without the interest penalty;
- -- discounts taken after expiration of the discount period;
- -- lost or misdirected invoices;
- -- inadequate coverage of payment terms in the Federal Acquisition Regulations; and
- -- gaps in agency reporting on payment practices.

Proposed Solutions

We want to solve these problems just as much as you do. But we believe the way to solve them is by managing better, not by tinkering with the Prompt Payment Act. Let me explain why.

First, as stated earlier, the Prompt Payment Act is working. Agencies have programmed computers to make payments automatically on the dates provided in their contracts or thirty days after receipt of a proper invoice. They have written desk procedures for use by thousands of clerks involved in the payment process. They have trained these clerks, their supervisors, their procurement and finance staffs, and the liaison staffs who answer questions for suppliers and for firms that want to become Government suppliers. To accommodate the changes suggested by S. 2479, the computers would have to be reprogrammed, the procedures rewritten, and the personnel retrained. This would be costly, and it could be extremely disruptive to payment practices that are presently working well. In the short run at least, this disruption could create worse problems for small businesses than those they are experiencing now.

Second, we do not believe the proposed amendments would do the job. For example, Section 4 of the bill would double the interest penalty in cases where the original penalty was not paid within 15 days of the payment date. We believe this would double the incentive for agencies to improperly deny that penalties were due, increase the incidence of contract disputes, and otherwise strain the business relationship between the Government buyer and the commercial supplier. In addition, Section 4 of the bill would cut the grace period during which interest penalties do not accrue from 15 days to 7 days. We believe this too would increase controversy by narrowing the window for payment without interest penalty. Frequently suppliers calculate their expected payment date based on when they mail an invoice. They do this because they do not know exactly when the invoice is received by the Government, nor when the goods in question are actually received by the Government. A 7-day grace period would greatly increase the number of cases where this difference in mail time or shipping time would make it appear that an interest penalty were due. We believe the Congress was right in setting a 15-day grace period and we would urge that it not be changed now.

Third, we believe that changing the rules for all payments would distract agencies from the more important work of solving the problems that continue to exist in a small number of payments. In short, we believe it is better to attack the remaining payment problems directly -- by tough management action -- rather than trying to change the entire payment system, a system that all acknowledge is working well.

Next Steps

Here is what we propose to do. First, we would revise Circular A-125 to redefine receipt of a proper invoice, consistent with Section 3 of S. 2479. This would limit the amount of time permitted to inspect goods or services to five working days unless the contract specifies a longer period. This would overcome the problem of delayed acceptance preventing the start of the payment clock.

Second, we intend to clarify applicablity of the act and the circular to construction contract payments and to amounts retained by the Government under construction contracts. This clarification will correct for the problem raised by Section 5 of S. 2479.

Third, if the record of this hearing demonstrates that the problems are severe enough, we would -- after consultation with the President's Council on Integrity and Efficiency -- set up a Prompt Payment Hotline. The hotline would receive complaints about agencies that are abusing the grace period, making payments after the grace period and not including interest penalties, taking discounts after expiration of the discount period, losing or misplacing invoices, and any other breakdown in the payment system. The hotline will enable us to identify payment centers that are not playing fair with suppliers, and to take corrective action -- without embarrassing individual suppliers or jeopardizing their business relationship with the agency involved.

Fourth, to assure appropriate changes to the Federal Acquisition Regulations (FAR) our Acting Administrator for Federal Procurement Policy met earlier this week with representatives of the two Procurement Regulatory Councils and directed that the substance of the Prompt Payment Act and OMB Circular A-125, including attachments 1 and 2, be incorporated into the FAR. He called for the draft regulation to be published within 30 days. If that date is not met by the regulatory agencies, OFPP will undertake to modify the FAR itself, using the authority provided in Section 6 of the OFPP Act.

And finally, in response to Section 7 of S. 2479, we intend to revise our reporting instructions to the agencies to gather information on the incidence of late payment -- whether requiring interest penalties or not -- the reasons for them, and the basis for determining whether penalty payments were in order.

We believe these steps can be taken with a minimum amount of disruption to the payment system, a system that is working well. We believe they are cost-effective, in that they go after the problems directly rather than by changing the entire system. And we believe they can be implemented more quickly than legislative change.

HCFA

The request for testimony asked that we address payments by the Health Care Financing Administration to providers and suppliers under the Medicare Program. We have reviewed the HCFA statement to be presented to the Committee and agree with it. We defer to the HCFA with respect to details of its payment system.

We appreciate the opportunity to comment on S. 2479, and appreciate the Committee's interest in improving the management of agency payment systems.

Senator **Trible**. Mr. Lordan, I applaud the initiatives that you spelled out that flow from the introduction of this legislation and the provisions of the bill now before us. The concern that I have heard expressed here today from really all the parties is that, not withstanding your best intentions, these problems have continued now through the years and there is not a reasonable expectation that they will be solved in the absence of a legislative mandate.

Address that concern for me, if you will.

Mr. **Lordan**. Mr. Chairman, I think the record of performance by the Federal Government in this area is something that we can take some pride in. The administration has taken it very seriously. Its commitment to small business and the health and vigor of small business is a sincere one. I have seen more activity in the agencies in this area than ever previously, and the fact that we have been able to move from a record where only 70 percent of the bills were being paid on time to a point where 99 percent of them are now paid on time in a 3-year period, I think, speaks pretty well for our potential for solving that remaining 1 percent.

As Mr. Hays indicated earlier, there will always be mistakes. People will always commit the occasional error. That is true whether we are dealing with the Government and a supplier, or between two private firms. Any individual firm might on occasion slip up in its payment practices. You have heard testimony here today about the relationship that often exists between general contractors and subcontractors. I think the Government in this regard at this stage is as good as most firms, and we can get better. We are committed to getting better. I think the record of performance over the past 3 or 4 years is such that there is a reasonable expectation we can get to some optimal point where some small number of errors are occurring, but the general picture and the testimony you will receive at some point in the future will be such that you will think we have gone as far with it as we can go.

Senator **Trible**. Let me ask you to comment, if you will, on some of the other provisions of the legislation that have not resulted in the kinds of initiatives you spelled out here today.

What about the problems of the grace period? How do we respond to that short of legislation?

Mr. **Lordan**. Mr. Chairman, I think the 15-day grace period made sense when Congress considered this legislation initially, and it still makes sense today. We heard the other witnesses relating anecdotal evidence. None of the associations that I heard were able to present comprehensive statistics with regard to the incidence of payment during the grace period.

We do not routinely collect those statistics, either, although as I said in my statement we will begin collecting those because of the questions raised by the committee. As soon as we received your invitation letter and were aware of the particulars of the legislation, we convened the Interagency Prompt Payment Task Force and gave them the assignment to get back to us in the 10 days or so that was available to them, and give us further details on not just late payments, those where penalties were necessary, but payments made during the grace period between the 30-day due date and the 45-day close of the grace period. Those statistics paint a picture of some payments being made before the 30-day limit, some made shortly thereafter, but certainly not a consistent picture of any agency deliberately abusing the grace period.

Remember, if you will, that to routinely pay on the 45th day in the large automated systems that the major procuring agencies are using you would have to override existing computer programs. Those programs are set up, as several of your witnesses indicated this morning, to pay on the 30th day. So to modify that in some way and deliberately pay on the 45th would require a manual override of an existing system. There is no indication that that is happening.

We have preliminary statistics from the Agriculture Department, the Commerce Department, from the Air Force, and the Defense Logistics Agency, from the Department of Justice, from the Department of Transportation, General Services Administration, and the Agency for International Development. Each of those cases show 90 to 97 percent of the bills being paid on or before the 30th day. In cases where payments were made during the grace period, the largest incidence of payment occurring in that third quarter, or third period, third 5-day period between 11 and 15, the largest incidence is the Agency for International Development which had only 3 percent of the payments occurring in that period.

Most of the others were in the range of .02 percent to one percent, a very narrow number of payments being made that period. Others made during the grace period were primarily in the first 5 days, something which presumably would continue even if modification of the Act took place.

We think it is reasonable that looking for a 30-day target you will inevitably make some of those payments before the 30th and some after the 30th. We think that is good business practice, and to the extent our agencies are doing that now we think they are doing what was intended by the Prompt Payment Act.

Senator Trible. Given that testimony and your assessment of the Federal experience as it relates to the use of the grace period, then I would really see no harm flowing from a reduction of that grace period from 15 days to 8 days.

Mr. Lordan. The potential harm, Mr. Chairman, as we see it is that it would increase the——

Senator Trible. You have got your computers all set. Right?

Mr. Lordan. Yes, sir.

Senator Trible. The payments as they fall within the grace period are falling in those first days.

Mr. Lordan. Yes, sir.

Senator Trible. So why not reduce the length of the grace period?

Mr. Lordan. The danger, Mr. Chairman, as we see it is it would increase the incidence of contention between suppliers and the Government customer. That is, if a payment shows up at a vendor's office after 50 days, they are pretty sure that the grace period has been missed; whereas, if it showed up 7 days after the initial payment date, there might be some question of mail times, and exactly when the goods were received by the Federal Government, exactly when the invoice was received in the proper paying office. A 7-day window would just increase the contentiousness, it seems to us, between supplier and customer in a way that really may not be necessary, given the performance of the agencies to date.

I think the statistics really can be viewed in either direction, and I think if we concern ourselves with the relationship between suppliers and the Government customer, we might conclude that keeping that a clearly defined 15-day period has advantages which will outweigh whatever benefits would accrue by further pressuring the agencies to do the best possible job.

Senator **Trible**. Mr. Lordan, I would encourage you to establish this prompt payment hotline.

Mr. **Lordan**. Yes, sir.

Senator **Trible**. Certainly in my soundings taken during the course now of two hearings and also in terms of my conversations with a whole lot of my constituents who do business with the Federal Government, it is that there are problems, and that if there was a clearly defined representative that people could turn to, that perhaps we could solve those problems and cut the redtape that oftentimes slows down the payment process. So I would hope that you would proceed with that idea.

Moreover, I would encourage you to not just implement these provisions, but see to it that they are faithfully followed and implemented. I thank you for your good faith, and I acknowledge, moreover, the substantial progress that has been achieved since the passage of the Prompt Payment Act. That of course has required cooperation between the legislative and the executive branch.

There is still room for improvement. Until then, we will work together. I thank you for being here today, and for returning this afternoon.

Mr. **Lordan**. On behalf of Dr. Miller and on my own behalf, thank you, Senator.

Senator **Trible**. All right. Let us return, then, to panel No. 4. Gentlemen, welcome once again.

Alan Spielman is executive director, Federal financing and tax legislation of the Blue Cross and Blue Shield Association. Welcome. And Joe Fleming, Esq., counsel for the National Association of Rehabilitation Facilities. Mr. Fleming, it is good to have you here, as well.

Gentlemen, proceed as you see fit. Again, your full statement will be made a part of the record. You have the advantage now of being able to respond to all that you have heard here today.

STATEMENT OF ALAN P. SPIELMAN, EXECUTIVE DIRECTOR, FEDERAL FINANCING AND TAX LEGISLATION, BLUE CROSS AND BLUE SHIELD ASSOCIATION, WASHINGTON, DC

Mr. **Spielman**. Thank you, Mr. Chairman.

The Blue Cross and Blue Shield Association is pleased to be here today to discuss this important subject. Our organization has been deeply involved in Medicare since the program's beginning 20 years ago.

Under contracts with the Health Care Financing Administration we process the vast majority of Medicare part A bills for hospital care, and about two-thirds of the claims for part B medical services.

You specifically asked for our comments on four points related to this issue, but before I respond I would like to provide a little background on the causes of this problem of late payments.

We believe the major cause of the problem is twofold. First, there simply has not been enough money for the most basic of contractor functions, claims processing. While the volume of Medicare claims is increasing dramatically, as you have heard from the earlier witness, the funding allocated to process those claims has actually decreased. From fiscal year 1984 through what we expect for fiscal year 1987, claims volume will increase by over 37 percent, while the actual and proposed funding for claims processing activities is going down by about 7.8 percent. To cope with this shortfall in fiscal 1986, the administration directed contractors such as Blue Cross and Blue Shield plans to allow claims inventories to rise.

Second, in April the administration testified before Congress that its policy was to delay the payment of Medicare claims in order to maximize interest on the Medicare trust funds. In particular, they testified that delaying claims payment would save as much as $130 million this year alone. I might add that since April a new management team has in fact come to HCFA, and we are encouraged by the commitment of this team to review this problem and explore some viable solutions.

Senator TRIBLE. Have you had an opportunity to have a dialog with this new team and underscore some of your concerns?

Mr. SPIELMAN. Yes; and that is ongoing as we speak. Mr. Hays mentioned his conversation with the regional administrators scheduled for this afternoon. In addition, the contractors have been meeting this week with HCFA representatives. We are encouraged by these efforts.

We also addressed this overall issue in testimony before the Senate Appropriations Committee earlier this year in connection with the fiscal year 1987 appropriations bill, and at that time we recommended that the funding for Medicare contractor activities be established at a level sufficient to enable them, absent any policy to the contrary, to restore claims processing timeliness back to its level at the end of fiscal year 1984, before we began to see a deterioration.

I would now like to respond to the specific questions that you posed. Your first question was our understanding of HCFA's new payment cycle policy.

In responding, I must refer back to the April testimony. At that time, the administration stated that its reasons for directing contractors to allow inventories to rise were twofold. First, to accommodate the administrative funding shortfall; and, second, by building the backlogs and slowing down claims processing it was hoped that the interest on the trust funds would be increased. At that time in April, this evolved into a 30-day payment standard. As I indicated previously, since April we have seen a change. More recently, the administration has considered establishing a 21- to 27-day payment cycle, which is as Mr. Hays indicated, an improvement over what would otherwise have been the case.

I might add that we had recommended for fiscal year 1986 a much higher level of funding than we are operating under right now. The Congress did in fact respond and approved an appropriation bill which was later cut by Gramm-Rudman. This exacerbated the situation. Additionally, there had been requests for some additional funding cuts as well.

Prior to this year, there was no policy on the payment cycle, and contractors were expected to minimize unprocessed claims inventories. Building up claims backlogs and slowing down the processing and payment of those claims does not save administrative costs. Quite the contrary. What it does is generate more inquiries from the public and the provider community, and more duplicate claims which add further to the backlog and the cost of processing that backlog.

While delaying claims payments does save money for the trust funds, beneficiaries and providers do end up paying the cost.

Your second question related to the prevailing practices on payment timeliness under the private sector. Speaking only for the Blue Cross and Blue Shield organizations, I would say that it is very difficult to make a precise comparison in this area for the reasons I laid out in my written statement. I cannot speak for commercial insurance companies.

We did, however, do some surveys early in 1985 which indicated that at that time Blue Cross and Blue Shield plans were about comparable in terms of Medicare claims and private claims. Since that time, as the statistics indicate, there has been an increase in the delay of Medicare claims. So at this point we believe that a survey done today would show that in fact we are paying more promptly in our private business than in Medicare.

Your third question related to whether the Prompt Payment Act applies now to Medicare payments, and I would say while we are in no position to render a formal opinion on this, it would appear from our casual review that it does not now apply to the Medicare claims payments.

Finally, and perhaps most importantly, you have asked whether the Prompt Payment Act should apply to Medicare payments. The Blue Cross and Blue Shield Association strongly supports the objective of assuring that clean Medicare claims are paid promptly. If the administration does not take action on its own to assure prompt payment through its budget and administrative policies, we would support legislation designed to accomplish this objective.

We believe that any legislation along these lines should reflect the following principles:

First, in our view, changes to the Medicare law are preferable to an extension of the Governmentwide Prompt Payment Act. There are a number of intricacies in Medicare and the payment cycle is closely related to other program objectives. So we think that Medicare law changes would be preferable.

Second, adequate flexibility should be provided so that the specified payment date does not apply to claims improperly completed, or those which require further development to assure Medicare's proper liability.

Third, we believe that any interest to be paid on late claims should not be funded out of moneys otherwise available for Medicare contractor activities. We believe this would be counterproductive. A major cause of the current problem is a lack of funding to pay the claims promptly. If that funding were reduced to fund the interest penalties, we would only exacerbate the problem of payment delays.

Fourth, we would suggest that any new administrative burdens be minimized.

Fifth, we would urge a reasonable effective date for any new legislation.

Sixth, we would urge that adequate funding should be made available through the appropriations process for the Medicare contractors to implement any new requirements.

In conclusion, we are pleased that the committee is examining the issue of payment delays under Medicare. These delays have had adverse effects on all parties involved. We strongly support efforts by the administration to assure timely claims payment by requesting and allocating sufficient funding for claims processing, and establishing an appropriate payment cycle. If the administration does not pursue these efforts, we would support carefully designed legislation to this effect.

Finally, we would urge the Congress to approve an adequate level of funding for Medicare contractor functions in the fiscal year 1987 appropriations bill, and any continuing resolutions that might be necessary.

Thank you.

Senator TRIBLE. Mr. Spielman, thank you for your very fine statement.

[The prepared statement of Mr. Spielman follows:]

TESTIMONY OF THE

BLUE CROSS AND BLUE SHIELD ASSOCIATION

IMPLEMENTATION OF THE PROMPT PAYMENT ACT OF 1982

BEFORE THE SENATE COMMITTEE

ON SMALL BUSINESS

June 19, 1986

Mr. Chairman and Members of the Committee I am Alan P. Spielman, Executive Director, Federal Financing and Tax Legislation for the Blue Cross and Blue Shield Association. The Association is the coordinating organization for all of the nation's Blue Cross and Blue Shield Plans.

The Blue Cross and Blue Shield organization has been deeply involved in Medicare since the program's beginning 20 years ago. Under contracts with the Health Care Financing Administration, our Association and Member Plans serve as Medicare intermediaries and carriers responsible for day-to-day administration of the program. Nationally, we process 85 percent of all Medicare Part A bills, including nearly all hospital bills, and 62 percent of Part B claims for medical services.

We appreciate your invitation to testify on the matter of late payments to providers, suppliers and beneficiaries under the Medicare program. You specifically asked for our comments on four points:

- Our understanding of HCFA's new policy regarding claims processing and payments, its relationship to prior policies, and its effects;

- The prevailing practices on payment timeliness under private health benefits programs;

- Our views on whether or not the Prompt Payment Act applies to Medicare payments to providers, and

- o Whether it would be sound public policy to include such payments under the Prompt Payment Act if current law does not already do this.

Before addressing these specific points, however, I would like to provide a national perspective on the problem of Medicare payment delays and growing backlogs of unprocessed claims. We believe that the major cause of this problem is twofold. First, there simply has not been enough funding for the most basic of contractor functions: claims processing. While the volume of Medicare claims is increasing dramatically, the funding allocated to process these claims has actually decreased. During the FY 1984 - FY 1987 timeframe, claims volume will increase by 37.4 percent while the Administration's actual and proposed funding for claims payment will decrease by 7.8 percent. To cope with this shortfall in FY 1986 the Administration directed contractors to allow claims inventories to rise.

Second, the Administration has testified before Congress that its policy is to delay the payment of Medicare claims in order to maximize interest on the Medicare Trust Funds. In particular, the Administration has testified that delaying claims payment under Medicare will result in "savings" of $130 million in interest this year alone.

The effects of inadequate claims processing funding and the government's decision to delay Medicare payments are now beginning to be felt across the nation. For the first 5 months of FY 1986 the Part B claims backlog increased by 37 percent over the closing backlog for FY 1985. Similar Part A statistics show an increase of 18 percent. At the current funding levels, by the end of FY 1986 Part A intermediaries will have 16 days work on hand with a conservative estimate of 1,062,000 bills pending over thirty days. Part B carriers are likely to have 18 days work on hand and 2,676,000 claims pending over thirty days. Contrasted with the fourth quarter of FY 1984, Part A bill inventories pending over 30 days would have increased by 530 percent, while overall Part A inventories would have increased by 259 percent. Part B claims inventories over the same period pending for over 30 days would have increased by 163 percent while overall inventories would have increased by 161 percent.

Rising inventories do affect "average processing time," though the impact is not felt immediately. At the end of FY 1984, the average processing time for all Part B claims was 12.5 days. In the first quarter of FY 1986 this figure was 15.3 days and further increases are expected by year end. For Part A, average bill processing time at the end of FY 1984 was 7.3 days for inpatient hospital bills, 8.5 days for outpatient bills and 12.1 days for nursing home and home health agency bills. In contrast, the average processing time in the first quarter of FY 1986 increased to 9 days for inpatient bills, 15.9 days for outpatient bills (almost double the prior level), 21.7 days for nursing homes, and 22.5 days for home health bills and, again, further increases are expected. It is important to note, however, that these statistics only count days from receipt of the claim to when it is approved for payment or denied. After the claim is approved for payment, it then spends several days in the contractor's check writing process, which often is on a weekly or bi-weekly cycle.

We addressed this issue in testimony before the Senate Appropriations Committee earlier this year in connection with the FY 1987 Labor/HHS Appropriation. We recommended that the funding for Medicare intermediary and carrier activities be established at a level sufficient to enable them (absent any policy to the contrary) to restore claims processing and claims payment timeliness to the level it was at the end of FY 1984.

I would now like to respond to the specific questions raised by the Committee:

HCFA's New Claims Processing - and - Payment Policy.

In testimony before the House Ways and Means Subcommittee on Health in April, the Administration stated that its reasons for directing contractors to allow claims inventories to rise were twofold: First, by paying contractors to process fewer claims than they receive, the contractor funding shortfall brought about by Gramm-Rudman-Hollings could be accommodated; and second, by building backlogs and slowing down claims processing, claims payment would be slowed and this would increase the interest earned on the Medicare Trust Funds. This evolved into a newly enunciated Administration policy: a claims payment cycle standard set at 30 days. More recently, the Administration has considered establishing a 21 to 27 day payment cycle. Under this approach, Medicare contractors would be expected to pay 95 percent of all "clean" claims no earlier than 21 days and no later than 27 days after receipt. Prior to this year, there was no policy on the payment cycle and contractors were expected to minimize unprocessed claims inventories.

Building up claims backlogs and slowing down the processing and payment of those claims does not save administrative costs. Quite the opposite. What it does is generate more beneficiary and provider inquiries and more duplicate claims, adding further to the backlog - and to the costs of processing that backlog. Moreover, it is difficult for contractors to respond to inquiries about claims that have not yet been processed. While delaying claims payments does save money for the Medicare Trust Funds, it should be recognized that beneficiaries and providers pay the cost. We are concerned that physicians and suppliers who currently accept assignment under Part B may opt to not accept assignment as claims payments slow down. The result would be a likely increase in the patient's out-of-pocket liability. We believe that making specific program changes in Medicare would be a more appropriate approach to deficit reduction than delaying claims payment.

If the government does go forward with a policy of delaying payment of claims, we recommend that it:

- clearly separate claims processing from claims payment -- it is more efficient and less disruptive for contractors to process all claims received and then delay payment than not to process large numbers of claims;

- clearly and publicly explain the new payment policy;

- o anticipate that the policy will generate a larger volume of costly inquiries for a long time to come (in spite of public explanations);

- o realize that to make a 27 or 30 day standard a reality for the great majority of claims -- and not just an average with wide variations around it (which would be even harder on those groups of beneficiaries and providers whose claims are most difficult to process) -- claims processing would have to be adequately funded.

PRIVATE CLAIMS PAYMENT CYCLES.

In a strict sense, no precise comparison can be made between how quickly Medicare and private business claims are processed and paid. The Medicare program is a uniform program with identical benefits for all claims. In addition, a relatively high percentage of Medicare claims are filled out by the beneficiary and often require additional information before they can be processed successfully. In contrast, private business programs are not uniform. In our own case, each Blue Cross and Blue Shield Plan handles claims from hundreds of different benefit programs, often subject to different cost containment and other controls like pre-admission review and second surgical opinions. Moreover, because of high physician participation rates and provider relations support, most private claims are "clean". Policies on how fast a claim should be paid are determined by individual Plans taking into account the private market environment. Prompt payment is an important aspect of our ability to successfully negotiate contracts with physicians and hospitals under which they accept our payment amounts as payment-in-full without billing the individual, except for any applicable cost-sharing.

Recognizing the imprecision in comparing Medicare with private business payment cycles, we nevertheless attempted to gain further information on this issue in surveys done in early 1985. At that point, prior to the Medicare processing slowdown, Blue Cross and Blue Shield Plans on balance tended to have similar processing times for both Medicare and private business. Claims processing timeliness was measured by the percentage of claims processed within 14 and 30 days of receipt.

Individual plans did vary, with some processing private business claims somewhat faster and others handling Medicare claims somewhat faster. However, there was no consistent pattern of processing Medicare claims more quickly. Since Medicare claims processing timeliness has slowed considerably since early 1985, it is reasonable to assume that a study done today would show that Blue Cross and Blue Shield Plans are processing private business claims more quickly than Medicare claims. From our perspective, the cost of the "float" is a necessary cost of doing business in the health care arena if our subscribers are to receive the benefit of payment-in-full protection. We have no information on the prevailing practice of claims payment timeliness of commercial health insurance companies.

WHETHER THE PROMPT PAYMENT ACT APPLIES TO MEDICARE PROVIDER PAYMENTS

Based on our initial review of the Act and its legislative history, we believe that it does not currently apply to Medicare claims payments.

SHOULD THE PROMPT PAYMENT ACT APPLY TO MEDICARE PROVIDER PAYMENTS?

We strongly support the objective of assuring that "clean" Medicare claims are paid promptly. If the Administration does not take action on its own to assure prompt payment through its budget and administrative policies, we would support legislation designed to accomplish this objective. We believe that any legislation along these lines should reflect the following principles:

(a) Changes to the Medicare law are preferable to an extension of the Government-wide Prompt Payment Act. We believe that the intricacies of Medicare and the close relationship between the payment cycle and other program objectives such as increasing the number of physicians and suppliers participating in Medicare argue for the development and implementation of unique Medicare rules on prompt payment;

(b) Adequate flexibility should be provided so that the specified payment date does not apply to claims improperly completed or requiring further development to assure Medicare's proper liability. While the notion of applying timeliness standards only to requests for payment that are complete is incorporated in the Prompt Payment Act, we believe that the unique aspects of Medicare warrant some additional flexibility. In reviewing claims under Medicare, there are often situations that require further development even where the claim itself has been properly filled out. For example, the claim might fail a medical review screen and trigger a request for the medical record to determine whether or not the services were necessary and covered under Medicare. Another example would be where the Medicare intermediary or carrier must do developmental work to establish whether or not Medicare should be the primary or secondary payer for the claim. These necessary functions take time and protections must be built in to assure that any prompt payment requirements do not adversely affect the integrity of these functions;

(c) Any interest required to be paid on late claims should not be funded out of monies otherwise available for Medicare contractor activities. We believe this is absolutely necessary if the objective of prompt payment is to be achieved. The major cause for the delay in payments under Medicare has been inadequate funding of the claims processing function. If that funding were further reduced in order to pay for the interest that might need to be paid on any late claims, payment delays will likely only get worse not better;

(d) New administrative burdens should be minimized. For example, we oppose establishing a new system to notify Medicare claimants in advance of the required payment date why a claim cannot be paid promptly. Such new systems would further burden the already overburdened claims processing system and would jeopardize the attainment of more prompt payment of claims;

(e) A reasonable effective date should be provided for any new legislation; and

(f) Adequate funding should be made available through the appropriations process to implement the new requirements.

CONCLUSION

In conclusion, we are pleased that the Committee is examining the issue of payment delays under Medicare. These delays have had adverse effects on the providers, suppliers and beneficiaries who file claims, the efficiency of the administrative agents that process claims under Medicare, and the Medicare program itself. We would strongly support efforts by the Administration to assure timely claims payment under Medicare by allocating sufficient funding for claims processing and establishing an appropriate payment cycle standard. If the Administration does not pursue these efforts, we would support carefully designed legislation to encourage prompt payment. We recommend, based on our 20 years of experience in administering the Medicare program, that any legislation to encourage prompt payment of Medicare claims be developed specific to the Medicare program rather than as an extension or clarification of the Prompt Payment Act of 1982.

Finally, we would urge the Congress to approve an adequate level of funding for Medicare contractor activities in the FY 1987 Labor/HHS appropriations bill and in any continuing funding resolutions that may be necessary.

Thank you for the opportunity to present our views on these issues. I would be pleased to answer any questions the Committee may have.

Senator Tribble. Mr. Fleming.

STATEMENT OF JOE W. FLEMING II, ESQ., COUNSEL, NATIONAL ASSOCIATION OF REHABILITATION FACILITIES, WASHINGTON, DC

Mr. Fleming. Thank you, Mr. Chairman.

I am appearing today on behalf of the National Association of Rehabilitation Facilities. My statement is also endorsed by the National Easter Seal Society and the American Occupational Therapy Association, which have some commonality of interest with the facilities we represent.

NARF has a membership of rehabilitation hospitals, rehabilitation units, and acute care hospitals and outpatient rehabilitation providers, approximately 300 of which are Medicare providers and render services to Medicare beneficiaries.

We are very interested in this issue. The reason we are interested in this issue, particularly for our outpatient facilities, is that their delays in receipt of Medicare payment are really off the charts. The terms of payment and the periods of payment you have heard about here today, arguing about whether payment is stretched from 27 days to 35 days, is really at the margin as far as we are concerned. We are looking at 4 to 6 months, chronically and typically.

We have facilities that have not been paid since last September and October, and they have no real indication as to when they will be paid. Something like the Prompt Payment Act either in its present form or as an amendment to the Medicare Act would be a godsend to these people.

Now relative to the jurisdiction of this committee, most of these facilities are small businesses. Most of them are nonprofits, but most of them are on a scale of small businesses. They operate with relatively small budgets. They have no equity. They live off contributions and fee-for-service income, and experiencing payment delays of this magnitude in some cases is fatal.

We have had facilities that have had to terminate programs, cut back on therapy staffs, and/or simply cease to take Medicare patients because of these chronic delays in payment.

The four points the previous witness addressed were also propounded to us, and I would like to respond to them briefly. Then I would like to take a minute or two and address some of the points that Mr. Hays made in his testimony.

With regard to whether the change in HFCA policy will have an adverse effect on Medicare providers, the answer is yes, but because of the delays that our people have experienced it is sort of marginal. It reminds me of the old song, "I've Been Down So Long, It Looks Like Up to Me." If we could get down to 35 days for receipt of payment, our people would think that they had entered throught the Pearly Gates.

On the second point, about experience with commercial carriers, we do not have comprehensive information on this point, but from talking with a number of people I have the very definite impression that the practice with commercial carriers is to receive payments within the 30-day standard that is contained in the Prompt

Payment Act. Therefore, imposition of that standard by law would bring Medicare in line with the practice of the commercial health insurance industry.

On the question of the legal relationship between the Prompt Payment Act and the Medicare Act, I have examined the Prompt Payment Act and I spend a fair amount of time working with the Medicare Act in my own practice. I cannot figure out why it is not covered, except that everybody simply says it is not. This seems to be a case of law by assertion rather than analysis.

The key point in the legislation are that it is applicable to the head of an agency acquiring property or service from a business concern. There is no question that HCFA or HHS, of which it is a component part, is an agency. There is no question that the facilities providing services are business concerns. They meet the definition in the statute. We think there is no question that HFCA is acquiring a services.

The point has been alluded to, without very specific reference, is that the use of intermediaries by Medicare somehow insulates HCFA from the ultimate provider, and therefore, breaks the contractual chain as it were. But, all of the hospitals and outpatient providers we represent, enter into a contract with the Secretary. By law, under the Medicare Act, they must have a contract with the Secretary of HHS to be participants in the Medicare program. They do not contract with Blue Cross, or Aetna, or any other intermediary. They have direct contractual relationships with the Government.

The services, of course, are provided to Medicare beneficiaries, which are third-party beneficiaries, if you will, of a contract between the Government and the provider. As I analogized in another conversation, the Park Service buys park benches for the public to sit on. No government ever sat on a park bench. Only citizens do. When the Government acquires a service for a beneficiary and sets up a very elaborate system of rules and regulations to govern payment for it, that fits exactly with the strictures of the Prompt Payment Act as it is now written.

The fourth question is, if it does not apply, should it? The answer is, yes. I do not know that that requires any elaboration except perhaps to say that procedurally it is suggested that perhaps this Committee or Government Affairs should defer to the Finance Committee because of the peculiar nature of the Medicare program. We certainly do not object to that. But I would hope that everybody who has a look into this problem will pull on it and try to get it resolved.

Now that is what I was going to say, but I listened to Mr. Hays' testimony and I would like to offer a couple of observations on it.

Senator Trible. Please, sir.

Mr. Fleming. He noted that it was the intention of HCFA to pay clean claims within 27 days. I certainly do not suggest any misrepresentation on his part, but I think when you look at that statement you will find that he was talking about averages. They are talking about paying claims on the average in 27 days.

That means that if you are a small provider, you may end up at the bottom of the pile, because they tend to do these things on dollars. They will say they met their 27-day standard if on the average for the total number of claims in dollars that they experience, they made those payments within the period. If you are dealing with smaller facilities, they may be way on the high end.

Even if you accept the 27 days as specific to a given provider, I would then observe that it would not disadvantage them to be subject to a 30-day pay standard because they say it is their intention to meet that in the first place, so why not hold them to it as a matter of law?

With regard to his observations about the 30 percent, that being his figure—I have no way to establish that—the 30 percent of claims that are in need of further development or information, I would again say that imposition of the Prompt Payment Act on the Medicare system would not adversely affect that. Under the act all the intermediary has to do is to advise the provider within the 15-day period why the billing is not completed and, therefore, why the claim is not a proper invoice under the terms of the statute.

Our people have a chronic problem of simply getting no information at all, of having things go on for 60 or 90 days, and then being told that there was some defect in the billing which would have been corrected within a matter of hours had they been advised of it in a timely manner.

The last point I would make is that his statement suggested that if required to comply with the terms of the Prompt Payment Act, Medicare might have to stint on its reviews for medical necessity and not make proper evaluations of claims. That really is the function of whether they have the people to do the job—30 days is an adequate period of time to make a judgment as to whether a service was medically necessary if you have people working on it. If you do not have people working on it, there is not any amount of time that is adequate.

A second consideration on that point is that there is an ongoing relationship between Medicare providers and HCFA and the intermediaries that serve HCFA. Providers do not come in, supply one piece of equipment, and then leave town. There is a payment stream and a contractual relationship that goes over time. Medicare, since its first days, has functioned on a system where adjustments were periodically made in payments. If it is discovered that a provider has received a payment that is in excess of what it is due, future payments due can be adjusted.

The idea that Medicare would somehow be a loser, or would pay money to someone from whom it could not recover in the event that there was a determination made that some claim was not medically appropriate, is simply not valid. The mechanisms exist for making those adjustments.

So the thrust of my testimony is that we need help, and we would appreciate anything the committee can do to give it to us either in terms of a clarification of existing law, or an amendment of the statute if you deem that to be necessary.

[The prepared statement of Mr. Fleming follows:]

NARF
NATIONAL ASSOCIATION OF REHABILITATION FACILITIES

John E. Lapidakis
President

John A. Doyle
Executive Director

STATEMENT OF JOE W. FLEMING, II ON BEHALF OF
NATIONAL ASSOCIATION OF REHABILITATION FACILITIES,
AMERICAN OCCUPATIONAL THERAPY ASSOCIATION, AND
NATIONAL EASTER SEAL SOCIETY
BEFORE THE SENATE COMMITTEE ON SMALL BUSINESS, REGARDING
IMPLEMENTATION OF THE PROMPT PAYMENT ACT.
JUNE 19, 1986

Mr. Chairman:

I appreciate the opportunity to appear before the Committee this morning on behalf of the National Association of Rehabilitation Facilities (NARF). NARF is the principal national membership organization of medical and vocational rehabilitation facilities. The membership includes approximately 300 medicare rehabilitation facilities which are providers of services under the Medicare program. My statement is also endorsed by the National Easter Seal Society and the American Occupational Therapy Association.

The Chairman's letter of invitation requested that I address four points related to the applicability of the Prompt Payment Act to the Medicare program. These are:

1. Appraisal of the current HCFA payment policy contrasting it with the prior policy with particular reference to the time between submission of Medicare billings and receipt of payment.

2. Appraisal of the payment practices of commercial insurance companies.

3. Analysis of the legal relationship between the Prompt Payment Act and the Medicare program, and

4. Assuming that HCFA is correct that the Prompt Payment Act does not apply to Medicare, assessment as to whether it should.

The bulk of the statement will be addressed to the third question, it being our belief that the Act as written clearly applies to Medicare I will also respond to the other questions posed by the Chairman and Senator Trible.

Before focusing on the legal relationship between the Prompt

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Payment Act and the Medicare Act, I want to review why the issue is an important one for rehabilitation facilities, primarily those providing rehabilitation services to medicare beneficiaries on an outpatient basis. In the process of doing so, I will respond to question No. 1.

Many of our member facilities are experiencing delays of well over six months between the submission of bills for services and receipt of payment from the government. This problem is particularly acute for comprehensive outpatient rehabilitation facilities (CORFs), a category of provider under the Medicare Act. There is no excuse for delays in payment of this duration. As is the case of any small business, such a failure of the government to pay its bills promptly has a very adverse effect on the facilities involved and, ultimately, on the beneficiaries of the Medicare program. In a recent survey NARF conducted, 31 out of 41 responding CORFs said they were not receiving payments promptly.

These circumstances are exactly those the Prompt Payment Act was intended to cure. It is not having that effect on the Medicare program and the Health Care Financing Administration (an element of the Department of Health and Human Services) which administers it, for the simple reason that HCFA takes the position that the Act does not apply to the Medicare program. HCFA is not making the interest payments that arise as a matter of law because of these delays in payments. This situation should be corrected. We urge the Subcommittee to establish that the Prompt Payment Act is applicable to the procurement of services by HCFA under the Medicare Act.

The Prompt Payment Act was passed to encourage agencies of the federal government to pay their bills in a timely manner. It was prompted by the adverse effect on government contractors, particularly small ones, of chronically late payments by procuring agencies. The interest penalties required by the Act are to encourage prompt payment. So long as a procuring agency pays promptly there is no penalty. This legislation is remedial, not punative. This is exactly what should be happening with Medicare. It is not.

The Prompt Payment Act requires that "agencies" of the federal government pay proper invoices within 30 days of receipt or begin to accrue an interest penalty. This penalty may be avoided if the bill in question is paid within 45 days of receipt. The Act applies to the "procurement of goods and services" by an "agency." A key and highly desirable element of the statutory scheme is the requirement that an invoice is deemed to be proper unless the procuring agency advises the party submitting it of any defect within 15 days of receipt. This prevents agencies from sitting on invoices and claiming some defect if and when demand is made for interest payments.

We strongly support this legislation and the changes that would be made in it by the enactment of S.2479. Elimination of the 15 day grace period would be a major improvement.

The primary objective of my testimony this morning is to call the attention of the committee to the failure of the Health Care Financing Administration to follow this law. HCFA does not process invoices for services rendered under the Medicare program within the prescribed 30 days and does not pay interest as required by the Act. There is no legal basis for its failure to do so.

Ironically, while HCFA takes the position that the Prompt Payment Act does not apply to Medicare, it is using the Act to justify delaying payments to providers. On April 22, 1986 the Acting Associate Administrator for Operations of HCFA, Kevin Moley, testified before the Subcommittee on Health of the House Ways and Means Committee. In his prepared statement he made the following observation:

> "However, we believe that some of the steps taken to live within the FY 86 budget level, such as increasing the payment cycle, are sound financial management initiatives that should be continued even in a less constrained budget environment. Although the Prompt Payment Act does not apply to the Medicare program, it does provide some guidance for consideration. In particular, the Act requires the Government to pay bills as close as possible to the 30th day after receipt. This is a dual-edged requirement acknowledging both the interest which can be earned on trust fund dollars and the obligation to pay bills with reasonable promptness. Given the fact that 6 percent of the Medicare trust

> fund revenues come from interest, moving to a 30-day cycle earns the trust fund approximately $130 million per year."

Thus, HCFA asserts that the Prompt Payment Act is not applicable while using the 30 day standard to rationalize delaying payments. This adds insult to injury.

In Mr. Moley's testimony he indicated that the adoption of this policy will result in a slight lengthening of the payment period on Medicare bills. I have no way to assess the accuracy of this statement, but I can report to the Committee that in any event he is dealing with averages rather than the experience of a given provider. Many, if not most, CORFs are experiencing payment delays of 6 months and longer. The new policy may make things worse, but they are already so bad that it will be hard to tell.

Let me turn to the legal question of whether the Prompt Payment Act is applicable to Medicare.

The Prompt Payment Act (31 U.S.C. 3902) provides that "the head of an agency acquiring property or a service from a business concern" is subject to the interest penalties prescribed by the Act. Thus, applicability of the Act to Medicare requires a positive finding with respect to three elements:

(1) That HCFA is an "agency"

(2) That it is "acquiring goods and/or services" in the administration of the Medicare program, and

(3) That Medicare providers are "business concerns."

If the answers to these three questions are in the affirmative, then HCFA should be paying Medicare providers promptly or paying interest to them on delinquent accounts as required by the Prompt Payment Act.

HCFA Is An Agency Covered by the Act.

There is no question that HCFA is an "agency" as defined in the Administrative Procedure Act, 5 U.S.C. §551(1). Were there any doubt, it has been dispelled by the fact that HCFA is, in fact, making payment of interest under the Prompt Payment Act on certain procurements. These payments have been reported to OMB and Congressional committees as required by 31 U.S.C. 3905.

HCFA Is Acquiring Services Through the Medicare Program.

The Medicare program involves acquisition of service by the government on behalf of certain designated beneficiaries. In order for a hospital, rehabilitation facility or other provider to render services and receive payments from Medicare it must enter into a contract with the Secretary of the Department of Health and Human Services. This contractual relationship is required by section 1866(a)(1) of the Medicare Act (42 U.S.C. 1395cc), a copy of which is attached. Also attached is a copy of the standard provider agreement used by HCFA whereby a provider of services enters into this contract with the Secretary. Pursuant to this agreement the government agrees to acquire medicare services for beneficiaries served by the contractor and to pay for those services in the form, manner and amount prescribed by the Medicare Act and regulations. As the Subcommittee will note, these terms are incorporated by reference in the provider agreement and are, thereby, part of the contract.

Accordingly, there is a clear contractual relationship between the Secretary of HHS and a provider of services under the Medicare program. By direction of the Secretary acting through his agents the provider renders care to those designed by the Secretary to receive it and is entitled by its contract to receive payment.

Claims for payment are made by contact agents of the government, known as "fiscal intermediaries." These are usually insurance companies or Blue Cross plans. As described in Mr. Moley's statement referenced above, they "act as the Government's fiscal agent in the processing of claims and reimbursement of beneficiaries, physicians and other suppliers." These fiscal agents are not suppliers of health care services and are not at risk for the cost of services. They are bill-paying agents working on contract to process claims from other government contractors. Their involvement in the Medicare process does not affect the fundamental buyer-seller relationship of the government and Medicare providers.

Medicare Providers Are "Business Concerns."

Section 1 of the Prompt Payment Act defines a "business concern" as "(A) a person carrying on a trade or business; and (B) a nonprofit entity operating as a contractor." The regulations issued pursuant to the Prompt Payment Act by the Office of Management and Budget (Circular A-125) also use this definition, expanded to include a "profession." Under any construction of these terms hospitals, rehabilitation facilities and other providers of service under the Medicare program qualify as "business concerns."

Neither the Prompt Payment Act nor its legislative history indicate any intent to exclude the acquisition of services under the Medicare Act from its terms.

We raise this issue with the Committee because many rehabilitation facilities are experiencing serious injury by the failure of the government to make timely payment of claims. The experience of a few selected facilities is illustrative.

In Connecticut and Massachusetts, CORFs report delays in billing of well over six months. These facilities are experiencing changing requests for additional documentation for medical review, requirements to resubmit billings on constantly changing forms, lack of prompt communication from the Medicare intermediary when documentation requirements change and hand processing of all bills. These facilities have amounts outstanding ranging from $15,000 to $120,000.

In Florida three facilities have tried to find out why they are not receiving any payments and cannot get any information from the intermediary on the reason for the delay. These facilities, which are all owned by the same company, just had a request for accelerated payments denied. They have had $140,000 outstanding in claims for over six months.

In Washington State, despite repeated meetings with the intermediary, a CORF has not been paid since last September and now has $80,000 outstanding over 30 days.

In Arkansas claims are routinely paid at best three months after submission. The provider now hand-delivers claims to the intermediary and obtains a signed receipt as proof the claims have been received because of previous claims by the intermediary that claims were never filed.

In Georgia a CORF experiences payments three to eight months after submission of bills. Reasons for the delay given by the intermediary are computer error and that the provider number (assigned by HCFA) was not being accepted by their "system." As a result of these delays the facility has cut back on staff and the scope of services delivered to beneficiaries.

These facilities and others similarly situated are entitled to the protection afforded to a business supplying goods and services to the government by the Prompt Payment Act. They are not receiving this protection because of HCFA's totally unjustified and unsupported position that it is not bound by the Prompt Payment Act. For the reasons set forth above, NARF believes that there is no question that the Act as written covers the Medicare program and that there is no legal basis for HCFA's position that it does not.

If one assumes that the Act does not apply to Medicare there is no reason why it should not. Medicare providers, such as those represented by NARF, are business concerns that have to pay their employees, landlords, suppliers and others. Most of these providers are nonprofit entities that have limited working capital. When Medicare claims are not paid in a timely manner the financial viability of these providers is jeopardized. Medicare payment rates are generally cost based and do not compensate the provider for interest expense of money tied up in Medicare accounts receivable. Accordingly, timely payment should be required and the Prompt Payment Act and the standards contained therein are appropriate.

In the letter I received from the Chairman and Senator Trible dated June 10 it was suggested that the standard for payment might be prevailing industry practice. From my personal experience and some spot checks with our member facilities I can report that most commercial health insurors pay claims within 30 days and, therefore, the application of the Prompt Payment Act would bring Medicare into line with such practices.

In summary, and to return to the four questions posed by the Chairman and Senator Trible, for comprehensive outpatient rehabilitation facilities the delays in payment from Medicare are ridiculously long and well beyond any periods being discussed by HCFA in the context of its new payment policy. The payment practices of commercial health insurance carriers are, we believe, within the 30 day standard contained in the Prompt Payment Act. NARF believes that the Act as now on the books is applicable to Medicare and should be observed by HCFA. Finally, NARF supports application of the Act to the Medicare program.

We urge this Committee to eliminate any doubt on this point by the adoption of report language or clarifying language making it crystal clear that the acquisition of services through the Medicare program is subject to the Prompt Payment Act.

Substituted "entity" for "institution or agency" each place it appeared.

1982 Amendments:

Section 122(g)(4) of the "Tax Equity and Fiscal Responsibility Act of 1982," applicable as provided in section 122(h) of this Act at ¶ 17,798L, substituted "(o), or (dd)" for "or (o)" in the last sentence of subsection (a).

Section 128(d)(3) of the "Tax Equity and Fiscal Responsibility Act of 1982," effective September 3, 1982, substituted "a hospital" for "an institution" and "the hospital" for "such institution" in subsection (b).

1972 Amendments:

Section 234(h) of the SS Amendments of 1972, applicable with respect to any provider of services for fiscal years (of such provider) beginning after March, 1973, substituted "paragraphs (6) and (8)" for "paragraph (6)" in the first sentence and substituted the present second sentence for the following: "If such Commission, as a condition for accreditation of a hospital, requires a utilization review plan or imposes another requirement which serves substantially the same purpose, the Secretary is authorized to find that all institutions so accredited by the Commission comply also with section 1861(e)(6)." (See also, the changes made by section 244(b) of these Amendments, below.)

Section 244(b)(1) of the SS Amendments of 1972, effective October 30, 1972, substituted the first two sentences for the following two sentences, as they were amended by section 234(h) of these Amendments, above:

"Except as provided in the second sentence of section 1863, an institution shall be deemed to meet the requirements of the numbered paragraphs of section 1861 (e) (except paragraphs (6) and (8) thereof) if such institution is accredited as a hospital by the Joint Commission on Accreditation of Hospitals. If such Commission, as a condition for accreditation of a hospital, (1) requires a utilization review plan as defined in section 1861(k) or imposes another requirement which serves substantially the same purpose, or (2) requires institutional plans as defined in section 1861(z) or imposes another requirement which serves substantially the same purpose, the Secretary is authorized to find that all institutions so accredited by the Commission comply also with section 1861(e)(6) or 1861(e)(8), as the case may be."

Section 244(b)(2) of the SS Amendments of 1972, effective October 30, 1972, added subsection (b).

History:

Sec. 102(a) of the SS Amendments of 1965 (P.L. 89-97); as amended by secs. 234(h) and 244(b) of the SS Amendments of 1972 (P.L. 92-603), secs. 122(g)(4) and 128(d)(3) of the "Tax Equity and Fiscal Responsibility Act of 1982" (P.L. 97-248), secs. 2345 and 2346 of the "Medicare and Medicaid Budget Reconciliation Amendments of 1984" (P.L. 98-369).

[¶ 17,022] AGREEMENTS WITH PROVIDERS OF SERVICES

[42 U.S.C. § 1395cc]

Sec. 1866. (a)(1) Any provider of services (except a fund designated for purposes of section 1814(g) and section 1835(e)) shall be qualified to participate under this title and shall be eligible for payments under this title if it files with the Secretary an agreement—

(A) not to charge, except as provided in paragraph (2), any individual or any other person for items or services for which such individual is entitled to have payment made under this title (or for which he would be so entitled if such provider of services had complied with the procedural and other requirements under or pursuant to this title or for which such provider is paid pursuant to the provisions of section 1814(e)),

(B) not to charge any individual or any other person for items or services for which such individual is not entitled to have payment made under this title because payment for expenses incurred for such items or services may not be made by reason of the provisions of paragraph (1) or (9) of section 1862(a), but only if (i) such individual was without fault in incurring such expenses and (ii) the Secretary's determination that such payment may not be made for such items and services was made after the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this title,

(C) to make adequate provision for return (or other disposition, in accordance with regulations) of any moneys incorrectly collected from such individual or other person,

(D) to promptly notify the Secretary of its employment of an individual who, at any time during the year preceding such employment, was employed in a managerial, accounting, auditing, or similar capacity (as determined by the Secretary by regulation) by an

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agency or organization which serves as a fiscal intermediary or carrier (for purposes of part A or part B, or both, of this title) with respect to the provider,

(E) to release data with respect to patients of such provider upon request to an organization having a contract with the Secretary under part B of title XI as may be necessary (i) to allow such organization to carry out its functions under such contract, or (ii) to allow such organization to carry out similar review functions under any contract the organization may have with a private or public agency paying for health care in the same area with respect to patients who authorize release of such data for such purposes,

(F) in the case of hospitals which provide inpatient hospital services for which payment may be made under subsection (b), (c), or (d) of section 1886, to maintain an agreement with a professional standards review organization (if there is such an organization in existence in the area in which the hospital is located) or with a utilization and quality control peer review organization which has a contract with the Secretary under part B of title XI for the area in which the hospital is located, under which the organization will perform functions under that part with respect to the review of the validity of diagnostic information provided by such hospital, the completeness, adequacy, and quality of care provided, the appropriateness of admissions and discharges, and the appropriateness of care provided for which additional payments are sought under section 1886(d)(5), with respect to inpatient hospital services for which payment may be made under part A of this title (and for purposes of payment under this title, the cost of such agreement to the hospital shall be considered a cost incurred by such hospital in providing inpatient services under part A, and (i) shall be paid directly by the Secretary to such organization on behalf of such hospital in accordance with a rate per review established by the Secretary, (ii) shall be transferred from the Federal Hospital Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and (iii) shall not be less in the aggregate for a fiscal year than the aggregate amount expended in fiscal year 1986 for direct and administrative costs (adjusted for inflation)) of such reviews,

(G) in the case of hospitals which provide inpatient hospital services for which payment may be made under subsection (b) or (d) of section 1886, not to charge any individual or any other person for inpatient hospital services for which such individual would be entitled to have payment made under part A but for a denial or reduction of payments under section 1886(f)(2),

(H) in the case of hospitals which provide inpatient hospital services for which payment may be made under this title, to have all items and services (other than physicians' services as defined in regulations for purposes of section 1862(a)(14)) (i) that are furnished to an individual who is an inpatient of the hospital, and (ii) for which the individual is entitled to have payment made under this title, furnished by the hospital or otherwise under arrangements (as defined in section 1861(w)(1)) made by the hospital,

(I) in the case of a hospital, to comply with the requirements of section 1867 to the extent applicable[,]

(J) in the case of hospitals which provide inpatient hospital services for which payment may be made under this title, to be a participating provider of medical care under any health plan contracted for under section 1079 or 1086 of title 10, or under section 613 of title 38, United States Code, in accordance with admission practices, payment methodology, and amounts as prescribed under joint regulations issued by the Secretary and by the Secretaries of Defense and Transportation, in implementation of sections 1079 and 1086 of title 10, United States Code[, and]

[(K)] not to charge any individual or any other person for items or services for which payment under this title is denied under section 1154(a)(2) by reason of a determination under section 1154(a)(1)(B).

(2)(A) A provider of services may charge such individual or other person (i) the amount of any deduction or coinsurance amount imposed pursuant to section 1813(a)(1), (a)(3), or (a)(4), section 1833(b), or section 1861(y)(3) with respect to such items and services (not in excess of the amount customarily charged for such items and services by such provider), and (ii) an amount equal to 20 per centum of the reasonable charges for such items and services (not in excess of 20 per centum of the amount customarily charged for such items and services by such provider) for which payment is made under part B or which are durable medical equipment furnished as home

ATTACHMENT 2
Page 1 of 1

EXHIBIT 4A

HEALTH INSURANCE BENEFIT AGREEMENT

(AGREEMENT WITH PROVIDER PURSUANT TO SECTION 1866 OF THE SOCIAL SECURITY ACT, AS AMENDED AND TITLE 42 CODE OF FEDERAL REGULATIONS (CFR) CHAPTER IV, PART 489)

AGREEMENT

BETWEEN
THE SECRETARY OF HEALTH AND HUMAN SERVICES
AND

__________ ______________________________

doing business as (D/B/A) ______________________________

In order to receive payment under Title XVIII of the Social Security Act, ______________________________

D/B/A ______________________________ ______________________________ as the provider of services agrees:

(a) not to charge any person for items or services precluded by Section 1866 (a) (1) of the Act, except as permitted by Section 1866 (a) (2) and 42 CFR 489, Subpart C.

(b) to return any monies incorrectly collected from any person, or to dispose of overpayments as specified in 42 CFR 489, Subpart D

(c) to furnish such information as the fiscal intermediary and where applicable Peer Review Organization finds necessary to determine the appropriateness of reimbursement on behalf of a beneficiary, for the period in which payment is to be made or any previous period.

(d) to promptly notify the Health Care Financing Administration (HCFA) of the involvement of any individual acting in a managerial, accounting, auditing, or similar capacity who was employed by the fiscal intermediary within the previous 12 months, as set forth in 42 CFR 420.203.

(e) to conform to the provisions of Section 1866 (a) (1) (E), (F), (G), (H) and related regulations in 42 CFR parts 405 and 466, as applicable to their status as a provider.

(f) that the agreement may be terminated by either party in accordance with the provisions of Section 1866 (b) (1) and (2) of the Act and 42 CFR Part 489, Subpart E. In the event of termination, the obligations of the Secretary to make payments to the providers of services shall be abrogated by the provisions of Sections 1866 (b) (3), (4) and (5) of the Act and regulations.

This agreement, upon submission by the provider of services of acceptable assurance of compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 as amended, and upon acceptance by the Secretary of Health and Human Services, shall be binding on the provider of services and the Secretary.

In the event of a transfer of ownership, this agreement is automatically assigned to the new owner subject to the conditions specified in this agreement and 42 CFR 489, to include existing plans of correction and the duration of this agreement, if the agreement is time limited.

ACCEPTED FOR THE PROVIDER OF SERVICES BY:

NAME (SIGNATURE)

TITLE	DATE

ACCEPTED BY THE SECRETARY OF HEALTH AND HUMAN SERVICES BY:

NAME (SIGNATURE)

TITLE	DATE

ACCEPTED FOR THE SUCCESSOR PROVIDER OF SERVICES BY:

NAME (SIGNATURE)

TITLE	DATE

FORM HCFA - 1561 (3-85)

Senator **Trible**. I thank, you, Mr. Fleming. That is a very fine statement. I appreciate the points you made in your written and oral statement, and then I appreciate your responses to what you have heard during the session. I have often found in my public life, and also in my life as a practicing attorney, that there was some advantage to being the last to testify or make his case.

Mr. **Fleming**. I appreciate the Chair according me that.

Senator **Trible**. So you have filled that role very effectively.

Mr. Spielman, you stated that Blue Cross and Blue Shield members pay their private claims more promptly than Medicare claims, at least in recent experience. Why should not the same standard as that that prevails in industry be the standard to which HCFA should try to move? And does HCFA's 21- to 27-day standard meet the industrywide standard?

Mr. **Spielman**. Well, in response to your first question I would say, yes, they should move to the prevailing industry practice. What gets difficult is the answer to your second question, because there is no single number that gives you the industry practice.

In our own experience, there are hundreds of different benefit plans being administered ith different kinds of requirements, some of which require more intervention than others. So I think it is difficult to come up with a precise number. I think certainly if you would look at going beyond 30 days, it would probably exceed any reasonable assessment of what the industry practice is.

Another factor to keep in mind is that there will always be the claim, the outlier claim, that requires lengthy development. Much of the time it may require collection of the medical records. I would agree with your intent. It is just that in operationalizing it, difficulties emerge.

Senator **Trible**. In terms of clean claims, clearly the 21- to 27-day standard is a fair one in your judgment?

Mr. **Spielman**. It is certainly well within the 30-day period. I suspect, although I could not verify, that it is within the range of private practice. In the private business, there is never any thought of deliberately delaying claims. They tend to be processed as quickly as your system can do it. If there is an electronic media submission, then you can turn the claim around in a few days. It tends to be done that way.

So to the extent they are moving downward from 30, I think that that is good. They have not reached the point of being quicker than private practice.

Senator **Trible**. Your words were, I think Mr. Fleming, is that it would be a godsend if they approached that standard?

Mr. **Fleming**. We would be very grateful.

Senator **Trible**. Well, I appreciate your testimony. This area about which you have testified is an area on which this committee really has not focused heretofore, but it is a matter of increasing concern to many. We will focus on that thoughfully, and we will work with our colleagues on the Finance Committee and the Governmental Affairs Committee and see if we can fashion an appropriate response either by way of executive action or legislative mandate.

Mr. **Fleming**. We appreciate that.

Senator **Trible**. Thank you, gentlemen, for being here.

Mr. SPIELMAN. Thank you.

Senator TRIBLE. With that, we will bring this hearing to a close.

[Whereupon, at 2:55 p.m., the hearing was adjourned.]

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APPENDIX

Jules W. Wertheimer
Industrial Consultant

(212) 734-5308

164 Gracie Station
New York, N.Y. 10028

June 4, 1986

THE FOLLOWING ARE THE RESOLUTIONS OF THE PROCUREMENT COMMITTEE OF THE RYE, NEW YORK DELEGATION, THE WHITE HOUSE CONFERENCE ON SMALL BUSINESS:

1. A clause should be included in all Federal Procurement Contracts mandating payment by the Prime Contractor of all Sub-Contractor invoices within 30 days of receipt of payment by the Prime Contractor from the Government.

2. That Small Business Set-Asides be continued, and that the "Rule Of 2" (i.e. a contract will be set-aside for exclusive Small Business participation if the Contracting Officer can expect reasonable Offers from 2 or more responsible Small Business Concerns) be retained as the Criteria therefor.

3. That entities which are either tax supported or tax exempt be reasonably restrained from competing with Small Business in bidding on Government Procurements.

Note:
A. The same or similar recommendations were chosen by the Procurement Issue Forum at the Syracuse Conference on May 22.

B. A similar recommendation to #3 was chosen by the Economic Policy Issue Forum at Syracuse.

Respectfully submitted,

Jules W. Wertheimer

Jules W. Wertheimer
Chairman, Procurement Committtee

SMACNA

Reply to: SMACNA, Capitol Hill
418 South Capitol St., S.E.
Washington, D.C. 20003
(202) 547-8202

June 18, 1986

The Honorable Paul S. Trible, Jr.
U.S. Senate
Washington, DC 20510

Dear Senator Trible:

As Director of Governmental Affairs for the Sheet Metal and Air Conditioning Contractors National Association (SMACNA), representing 2,500 specialty construction contracting corporations nationally and internationally, I want to express our strong support for your bill S. 2479, the prompt payment amendments. While we will not testify at the hearing this week, we want the record to show that we join others in the construction industry actively lobbying for your legislation. As you are aware, current law requiring all federal agencies to pay for goods and services within 45 days has not been as effective as intended. S. 2479 will correct a number of the problems our members have in receiving their pay when due.

While SMACNA members frequently function as prime contractors on a project site, most often they are project subcontractors. The major shortcoming in the legislation is glaringly obvious and most troublesome to subcontractors and their organizations. This is the failure to require prime contractors to pay their subcontractors within a specified date. In other words, your amendments do not require the benefits of prompt payment to be shared between general and subcontractors. Since the overwhelming majority of work on federal projects is done by subcontractors, it is ironic that they are left out of the otherwise valuable bill. While the general or prime contractor has enjoyed the ability to escape prompt pay requirements to date, that is no reason to continue this inequity for subcontractors. We feel your legislation offers the best opportunity to correct a practice that has only increased project delays, government costs, subcontactor financial strain, and unnecessary inconvenience to small businesses.

In too many cases our contractors have been forced to seek payment assistance from the agency involved in the project.

SHEET METAL AND AIR CONDITIONING CONTRACTORS' NATIONAL ASSOCIATION, INC.
HEADQUARTERS: 8224 OLD COURTHOUSE ROAD, VIENNA, VIRGINIA • 703-790-9890
MAILING ADDRESS: P.O. BOX 70 • MERRIFIELD, VIRGINIA 22116

Once this has failed, they have been forced to seek court action. All this wasted time and trouble costs the subcontractor money and often deters the specialty subcontractor from bidding on government projects. In many cases the general contractor denies he has been paid so the subcontractor must take valuable time to institute a collection procedure. One recent example involved a California subcontractor who was forced to come to Washington, DC to communicate with the government agency, his Senators and Representative to get paid for a project completed many months before. This could be prevented in the future if your bill's coverage extended to subcontractors.

In closing, SMACNA wants to thank you for your sensitivity to the late payment problem on government projects. While your legislation is a valuable step in the right direction, it will do little to provide overdue relief to the many subcontractors currently at risk when working on government contracts. Thank you.

Sincerely,

Stan Kolbe

Stanley E. Kolbe, Jr.
Director, Governmental Affairs

mgsi MicroGraphic Services Inc.

Three Skyline Place, Suite 1210
5201 Leesburg Pike
Falls Church, Virginia 22041
(703) 824 0300

June 18, 1986

The Honorable Paul S. Trible
United States Senate
Senate Committee on Small Business
Russell Office Building Room 428A
Washington, DC. 20510

Dear Senator Trible,

MicroGraphic Services Inc. appreciates the opportunity to attend the Senate Small Business Committee's hearing on the Prompt Payment Amendments, S. 2479 as introduced on May 21, 1986 by the Honorable Mr. Trible and 19 distinguished cosponsors. As a small business concern, MGSI would like to participate in this government affair which impacts our financial well being as a company. After a review of the proposed amendments, it is evident that MGSI is not alone in our continual battle with various government agencies for payment on goods and services delivered in good faith.

Your statements as noted in the congressional record May 21, 1986 describe perfectly the government contractors dilemma. "Mr. President ... significant problems persist. In a regrettably large number of instances, either through inefficiency or outright subterfuge, Federal agencies circumvent the requirements of the Prompt Payment Act. Agencies have prevented the payment clock from running by delaying acceptance or invoice certification. Far too many invoices are "lost" by the government, requiring contractors to expend additional time and effort re-submitting invoices."

It is a shame that within our government we have employees paid by our tax dollars who find it necessary to try and find ways to circumvent the intention of the laws established to meet the needs of the public. I agree that eliminating the ambiguities that have been discovered by the various agencies will be beneficial to both government and contractor alike. The three main points addressed by the amendments: invoice receiving date, 15 day grace period and the interest payment provision are right on target. Those three points are the most abused and are interpreted differently by each agency.

I believe the amendment requirements placed on the various agencies to account for their late payment practices and non-compliance of interest and penalty payments to be necessary in forcing the various agencies to comply with the Prompt Payment Act, and fulfill the spirit and intent of the original act, Public Law 97-177 as passed in the 97th Congress 1982.

It is very pleasant to find your interest and concern in this issue strong enough for you to pursue clarification of the current law through legislation. The following documentation is for your use in support of the amendments you proposed.

Sincerely,

Michael R. Ricci
President, MicroGraphic Services Inc.
Member, AIIM Government Affairs Committee

Contents

Cover Letter

Introduction to MicroGraphic Services Inc.

Invoicing the Government

General Statement of Government Late Payment

Late Payment Excuses

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Sample Invoice Collection Problems

Correspondence with Congressman Wolf

Other Comments

Introduction to MicroGraphic Services, Inc.

MicroGraphic Services Inc. (MGSI)

Veteran Owned Small Business

Incorporated on April 1, 1980 in Virginia

Federal Id.# 54-1131561

Michael R. Ricci, President

Glenn J. Morris, Vice President Marketing

MGSI provides third party maintenance on microform and computer graphic equipment, as well as being dealers for the same technical equipment.

Micro/Graphix, a division of MicroGraphic Services, Inc. is dedicated to providing quality, low cost presentation graphics and serves as a dealer for PC based work stations.

Invoicing the Government

MGSI has the following government billing schedule:

Repair service calls are billed after the requesting agency places the service call and a technician completes the work. Actual billing cannot take place until MGSI has all the paperwork required by the government.

Maintenance agreement billing is in arrears, either quarterly, semi-annually or annually, based on the government fiscal year.

Product sales are invoiced after MGSI delivers the product or receives notice of shipment from the supplier. Also all government paperwork must be coordinated between the end user and the procurement officer prior to invoicing.

General Statement of Late Payment

Through experience in collecting money from the government it has been discovered that everyone has a different interpretation as to when an invoice has been received. This seems to be the area where most of the confusion by government employees exists. They are under the impression that the invoice clock doesn't start until it arrives at the paying office.

As a small business, MGSI is placed under strict payment terms with suppliers and the invoice clock starts ticking when the product is shipped. It would certainly seem fair if the government had to pay it's bills under the same rules as small businesses do in the commercial business place. It is very difficult to explain to creditors that the government is slow when it comes to paying their bills. This is virtually impossible if the creditor has no direct dealings with the government. In addition, the 15 day grace period is almost always taken to extend payment to the last minute.

Late Payment Excuses

The following are common excuses given for invoices not being paid on time:

"This is Uncle Sam you are dealing with, Lady. You will get paid when you get paid!" (click)

"We have not received the receiving report yet."

"We do not have a copy of that invoice, you will have to resubmit a copy."

"A copy is not enough, we need an original and four copies."

Non-compliance to Interest Payment Provision

In many cases after a late payment has been received, including no interest, MGSI has attempted to invoice for due interest. Attached are three typical government responses to the request for payment.

Invoice Discrepancy - 2

NNSY 4365/2 (8-84)

DEPARTMENT OF THE NAVY
NORFOLK NAVAL SHIPYARD
PORTSMOUTH, VIRGINIA 23709

IN REPLY REFER TO:
4365(630.11')
Ser: ______
Date: 2/19/85

MicroGraphic Services Inc
4516 Old Columbia Pike
Annandale, VA 22003

Encl: (1) Your invoice number(s) 482113 in the amount(s) of $ 2.88 on Purchase Order Number N0018-84-F-1331.

Gentlemen:

This office is returning enclosure (1) for the following reason(s).

___ Freight/demurrage is not allowed on the purchase order.

___ Duplicate invoice or duplicate shipment - if duplicate shipment, please attach Proof of Delivery for BOTH shipments to invoice and return with copy of this letter.

___ Name on invoice does not agree with name on purchase order. You must bill in accordance with name on purchase order.

___ Invoice mailed to incorrect address. Mail invoice to address indicated in Block 13 on your copy of purchase order.

___ Need signed Proof of Delivery to process invoice for payment.

___ Replacement material - material originally paid on Invoice Number ____________ dated ________.

___ Duplicate shipment - material returned.

___ Does not belong to the purchase order number shown on invoice - please attach copy of purchase order to your invoice and return with a copy of this letter.

X Other: We do not pay finance charge

R.J. Rotherrel for
J. K. SIEBER
Supervisor, Accounts Payable Unit

DATE	NUMBER	PAGE
02/08/85	482113	1

mgsi
MicroGraphic Services Inc.
4516 Old Columbia Pike
Annandale, VA 22003

(703) 642-14[illegible]

SOLD TO
NORFOLK NAVAL SHIPYARD
CODE 630.111
PORTSMOUTH, MA 23709

SHIP TO
SAME

84F 1331

ORDER NO.	ORDER DATE	CUSTOMER NO	SALES-PERSON	PURCHASE ORDER NO	SHIP VIA	DATE SHIPPED	TERMS
	02/08/85	G00120	111	SEE BELOW	N/A	N/A	NET 30

QTY ORDERED	QTY SHIPPED	QTY. B.O.	ITEM NO	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
				FINANCE CHARGES ACCRUED ON INVOICE #31465 REFERENCING PO# 4052-5750-5754 INVOICE DATE: 10/17/84 PAYMENT DATE: 01/15/85		2.88

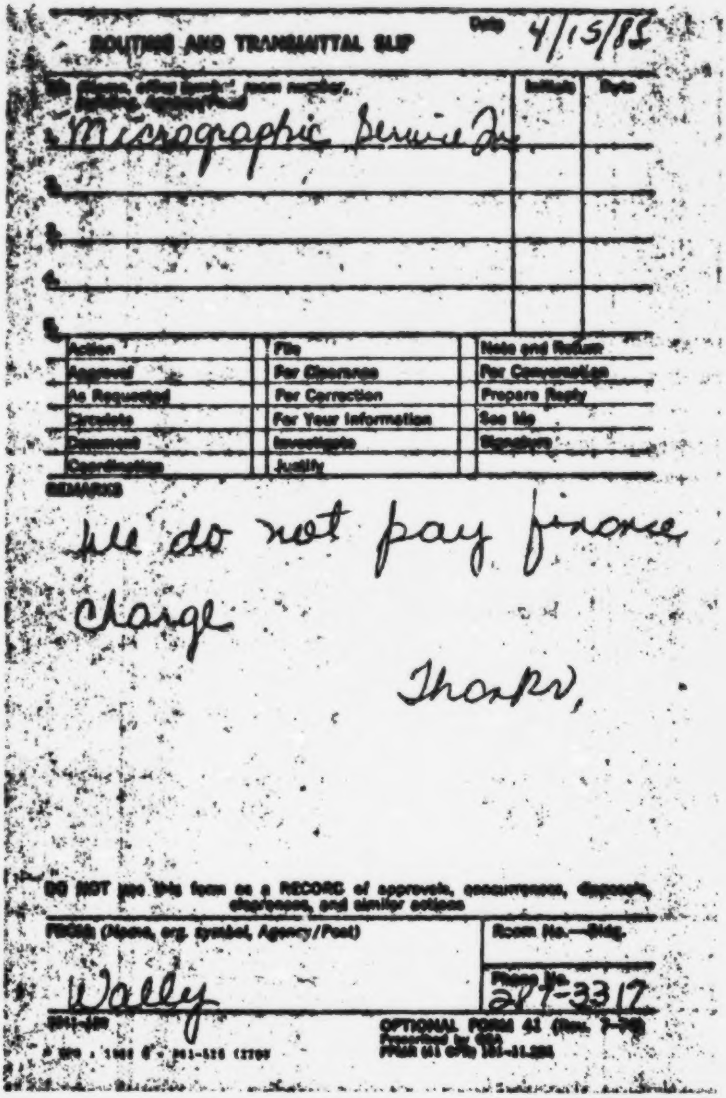
THANK YOU

Federal I.D. Tax #54-1131561
Fast Pay

Please Remit To: MGSI, P. O. Box 1300
Annandale, VA 22003

SALE AMOUNT	2.88
MISC CHARGES SALES TAX FREIGHT	
TOTAL	2.88

CONDITIONS. Accounts over 30 days will be assessed a 1½% service charge (equal to 18% per year).



ROUTING AND TRANSMITTAL SLIP Date 4/15/85

TO: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
1. Micrographic Service In		
2.		
3.		
4.		
5.		

	Action		File		Note and Return
	Approval		For Clearance		Per Conversation
	As Requested		For Correction		Prepare Reply
	Circulate		For Your Information		See Me
	Comment		Investigate		Signature
	Coordination		Justify		

REMARKS

We do not pay finance charge

Thanks,

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)	Room No.—Bldg.
Wally	Phone No. 277-3317

5041-102

OPTIONAL FORM 41 (Rev. 7-76)
Prescribed by GSA
FPMR (41 CFR) 101-11.206

☆ GPO : 1983 O - 381-526 (270)

mgsi
MicroGraphic Services Inc.
4616 Old Columbia Pike Annandale, VA 22003
PLEASE REMIT TO: MGSI, P. O. Box [illegible]
Annandale, VA [illegible]

(703) [illegible]

DATE	NUMBER	PAGE
04/03/85	480113	1

invoice

SOLD TO:
Smithsonian Institute
Ofc of Accting/Financial
P.O. Box 23398, L'Enfant PLaza
Washington, DC 20026-0398

SHIP TO: Same

ORDER NO.	ORDER DATE	[illegible]	[illegible]	PURCHASE ORDER NO.	SHIP VIA	DATE SHIPPED	TERMS
		C00242	111	See Below	n/a	n/a	net 30

QTY. ORDERED	QTY. SHIPPED	QTY. B.O.	ITEM NO.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
				Finance charges accrued on Invoice# 30712 Invoice date: 7/3/84 Payment date: 11/16/84 Purchase order# SP4060480000		28.05
				**Our terms are net 30		

RECEIVED
'85 APR -5 P4:23
SMI. ACCT. OFFI

THANK YOU

Federal I.D. Tax #54-1131581

SALE AMOUNT	28.05
MISC. CHARGES SALES TAX FREIGHT	
TOTAL	28.05

FAST PAY
[redacted] Net 30. Accounts over 30 days will be assessed a 1½% service charge (equal to 18% per year).

ROUTING AND TRANSMITTAL SLIP

Date 25 Apr 85

TO: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
1. Billing		
2.		
3.		
4.		
5.		

☐	Action	☐	File	☐	Note and Return
☐	Approval	☐	For Clearance	☐	Per Conversation
☐	As Requested	☐	For Correction	☐	Prepare Reply
☐	Circulate	☐	For Your Information	☐	See Me
☐	Comment	☐	Investigate	☐	Signature
☐	Coordination	☐	Justify	☐	

REMARKS

Please note:

We do not pay finance charges unless modified to do so.

RECEIVED APR 29 1985

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, org. symbol, Agency/Post)	Room No.—Bldg.
Comm. Accts. Ft Ritchie	Phone No.

5041-102

OPTIONAL FORM 41 (Rev. 7-76)
Prescribed by GSA
FPMR (41 CFR) 101-11.206

☆ U.S. G.P.O. 1982-367-348

DATE	NUMBER	PAGE
04/04/85	581013	1

mgsi
MicroGraphic Services Inc.
4516 Old Columbia Pike
Annandale, VA 22003

(703) 642-1444

SOLD TO:
Fort Ritchie
Finance & Accounting Ofc
Building 147
Fort Ritchie, MD 21719

SHIP TO
Same

ORDER NO.	ORDER DATE	CUSTOMER NO.	SALES-MAN	PURCHASE ORDER NO.	SHIP VIA	DATE SHIPPED	TERMS
		C00145	111	See Below	n/a	n/a	net 30

QTY. ORDERED	QTY. SHIPPED	QTY. B.O.	ITEM NO.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
				Interest charges accrued on **Invoice# 31708** Invoice date: 11/26/84 Payment date: 2/6/85 PO# DAKA08-85-M-0229X **Our terms are net 30.		3.76

THANK YOU

Federal I.D. Tax #54-1131561
Fast Pay

Please Remit To: MGSI, P. O. Box 1300
Annandale, VA 22003

Do not pay [illegible]
[illegible]

[redacted]. Accounts over 30 days will be assessed a 1½ service charge (equal to 18% per year).

SALE AMOUNT	3.76
MISC CHARGES	
SALES TAX	
FREIGHT	
TOTAL	3.760

Credit Hold Lists for the Past Year

Attached are the past year's lists of customers who were at least 30 days past due with no scheduled payment date projected. Any incoming orders for those customers were held if at all possible until payment was received. The highlighted accounts are government.

MEMORANDUM

TO: All Salespeople

FROM: Cindy

DATE: June 12, 1986

SUBJECT: Credit Hold List

Do not process orders for the following customers until checking with me first!!

C00042	Pepco
C00086	Micro Labs
C00646	United Way
C00679	Mercedes Benz Trucking
G00022	Dept. of State
G00040	House Information Systems
G00054	MDW-FAO
G00055	Navy Department
G00063	1947th ASG/DACFA
G00073	USA HCPAC
G00087	US Marine Corps
G00113	US Customs Service
G00198	Bd. Correction Naval Records
G00222	US Fish & Wildlife
G00233	Naval Supply Systems
G00283	Naval Publications & Forms
G00295	FAADCLANT
G00296	Civilian Personnel Office
G00298	Fort Ord
G00303	Fort Detrick

Permanent C.O.D.

C00106	Southeastern University
C00161	National Health Labs
C00474	Lasr Robotics
C00576	Versar
C00659	American Homeworkers
C00413	Micro Image Systems
S00002	Leet-Melbrook

MEMORANDUM

TO: All Sales Personnel

FROM: Cindy

DATE: May 21, 1986

SUBJECT: Credit Hold List

Do not process orders for the following customers until checking with me first!

C00042	Pepco
C00193	Smithsonian Institute
C00705	Geodynamics Corp.
G00026	Department of Justice
G00039	Internal Revenue Service
G00055	Navy Department
G00059	Naval Medical Command
G00063	1947th ASG/DACFA
G00073	USARCPAC
G00113	US Customs Service
G00188	Board Correction Naval Records
G00222	US Fish & Wildlife Service
G00233	Naval Supply Systems Command
G00281	DCASR-Philadelphia
G00283	Naval Publications & Forms Center
G00295	FAADCLANT
G00296	Civilian Personnel Office
G00303	Fort Detrick
S00002	Leet-Melbrook

Permanent C.O.D.

C00106	Southeastern University
C00161	National Health Labs
C00474	Lasr Robotics
C00576	Versar

Michael

mgsi MicroGraphic Services Inc.
Sales, Service, Consulting of Microform Systems

[illegible]
[illegible], VA [illegible]
Washington, D.C. Metro Area
(703) 642-[illegible]

[illegible] Rd., Suite 110
Virginia Beach, VA [illegible]
Telecopier (804) [illegible]
Peninsula (804) [illegible]

Problem Customers as of 1/13/86

C00010	Georgetown University
C00042	Pepco
C00235	Catholic University
C00620	Fairfax Opportunities Unlimited
G00001	Calm VA
G00005	GSA
G00027	Bureau of Alcohol, Tobacco & Firearms-SERVICE
G00063	1947th ABG/DACFA
G00268	Naval Air Test Center-SERVICE
G00270	US Army Info Sys Mgmt

Permanent COD Only

C00474	Lasr Robotics
C00576	Versar

Please see me before confirming any of their orders

G00277	Naval Ordnance Station

Thanks
Craig

TO: All Sales Personnel

FROM: Cindy

DATE: February 20, 1986

SUBJECT: Credit Hold List

Do no process orders for the following customers until checking with me first.

C00032	Alexander & Alexander
C00054	Contel
C00102	Washington Hospital Center
C00151	Janelle Aviation
C00588	Systems & Applied Science Corp.
C00646	United Way of America
C00652	BDM Corporation
C00654	Innovative Technology
G00005	GSA
G00026	Department of Justice
G00027	Bureau of Alcohol, Tobacco & Firearms
G00054	MDW-FAO
G00055	Navy Department
C00113	US Customs Service
G00142	US Secret Service
G00196	Marine Corps Development & Education Command
G00213	US Department of Commerce
G00233	Naval Supply Systems Command
G00268	Naval Air Test Center
G00277	Naval Ordnance Station
G00281	DCASR Philadelphia
G00283	Naval Publications & Forms Center
G00288	GSA
G00290	Department of Education
S00002	Leet-Melbrook

Permanent C.O.D.

C00474	Lasr Robotics
C00576	Versar

TO: All Sales Personnel

FROM: Cindy

DATE: March 6, 1986

SUBJECT: Credit Hold List

Do not process orders for the following customers until checking with me first.

C00032	Alexander & Alexander
C00054	Contel
C00102	Washington Hospital Center
C00106	Southeastern University
C00136	Baltimore Air Coil
C00156	Potomac Hospital
C00161	National Health Labs
C00207	Georgetown University
C00335	American Council on Education
C00551	Technology Applications
C00588	System & Applied Science Corp.
C00650	Baltimore Industrial Park
C00654	Innovative Technology Inc.
G00005	GSA
G00010	Arlington Hall Station
G00011	F.D.I.C.
G00026	Department of Justice
G00027	Bureau of Alcohol, Tobacco & Firearms
G00055	Navy Department
G00113	U.S. Customs Service
G00142	U.S. Secret Service
G00163	Peace Corps
G00188	Board Correction Naval Records
G00233	Naval Supply Systems Command
G00268	Naval Air Test Center
G00277	Naval Ordinance Station
G00281	DCASR - Philadelphia
G00283	Naval Publications & Forms Center
G00290	Department of Education
G00291	Postal Data Center
S00002	Leet-Melbrook

Permanent C.O.D.

C00474	Laer Robotics
C00576	Versar

T Michael

MEMORANDUM

TO: All Sales Personnel

FROM: Cindy

DATE: April 8, 1986

SUBJECT: Credit Hold List

Do not process orders for the following customers until checking with me first!!

C00025	Satallite Business Systems
C00102	Washington Hospital Center
C00106	Southeastern University
C00161	National Health Labs
C00563	XMCO
C00676	Capital Publications
G00010	Arlington Hall Station
G00027	Bureau of Alcohol Tobacco & Firearms
G00055	Navy Department
G00059	Naval Medical Command
G00063	1947th ASG
G00113	U.S. Customs Service
G00142	U.S. Secret Service
G00188	Board for Correction Naval Records
G00213	U.S. Department of Commerce
G00233	Naval Supply Systems Command
G00268	Naval Air Test Center
G00281	DCASR - Philadelphia
G00283	Naval Publications & Forms Center
G00291	Postal Data Center

MEMORANDUM

TO: All Sales Personnel

FROM: Cindy

DATE: April 30, 1986

SUBJECT: Credit Hold List

Do not process orders for the following customers until checking with me first!

C00025	Satellite Business Systems
C00042	Pepco
C00102	Washington Hospital Center
C00413	Micro Image Systems (Va. Beach Customer)
C00563	XMCO
C00698	Cincom Systems
G00003	Department of Agriculture
G00027	Bureau of Alcohol, Tobacco & Firearms
G00055	Navy Department
G00063	1947th ASG/DACFA
G00090	Langley Air Force Base (Va. Beach Customer)
G00113	US Customs Service
G00120	Norfolk Naval Shipyard (Va. Beach Customer)
G00122	Naval Air Rework Facility (Va. Beach Customer)
G00188	Board Correction Naval Records
G00233	Naval Supply Systems Command
G00281	DCASR - Philadelphia
G00283	Naval Publications & Forms Center
G00295	FAADCLANT
G00296	Civilian Personnel Office
G00298	Fort Ord

Permanent COD

C00106	Southeastern University
C00161	National Health Labs
C00474	Lasr Robotics
C00576	Versar

Michael

mgsi MicroGraphic Services Inc.
Sales, Service, Consulting of Microform Systems

4516 Old Columbia Pike
Annandale, VA 22003

Washington, D.C. Metro Area
(703) 642-2700

4461 Haygood Rd., Suite 110
Virginia Beach, VA 23455

Tidewater (804) 460-9080
Peninsula (804) 245-1075

PROBLEM ACCOUNTS AS OF 7/1/85

C00025	Satellite Business Systems	(SALES)
C00078	Law Engineering & Testing	(SALES)
C00224	Craftworld, Inc	(SALES)
C00474	Laser Robotics	(SALES)
G00042	USA Garrison & Ft Detrick	(SERVICE)
G00052	Dept of Tresury	(SERVICE)
G00063	1947th ASG/DACFA	(SERVICE)
G00094	Dept of Commerce	(SERVICE)
G00169	Office of Personnel Mgmt	(SALES)
G00249	Dept of Tresury	(SALES)

**Please check with Cindy before processing any orders or performing any service for these customers. Thanks.

Problem Accounts as of August 20, 1985

G00023	National Institutes of Health	SERVICE (S/N:106104,106107,106110)
G00027	Bureau of Alcohol, Tobacco...	SERVICE (S/N:110664)
G00042	USA Garrison & Ft Detrick	SERVICE (MDA903-85-M-1135-see contr for S/N
G00062	Bolling Air Force Base	SALES & SERVICE (S/N:230576)
G00087	Marine Corps	SERVICE (M00027-85-M-2577-see contr for S/N

**Please see Cindy before processing any orders or performing any service for these customers.

Michael

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Tidewater (804) 460-9080
Peninsula (804) 245-1075

Problem Accounts as of ~~August 30, 1985~~ Sept 12, 1985

C00025	Satellite Business Systems	SALES
C00450	Columbia Research Corp	SALES
G00026	Dept of Justice	SALES
G00062	Bolling Air Force Base	SALES
G00063	1947th ASG	[redacted]
G00087	US Marine Corps	[redacted]
G00100	Defense Logistics Agency	[redacted]
G00167	Naval Surface Weapons	SALES
G00240	Department of Army	[redacted]
G00243	Department of Justice	SALES

Michael

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4616 Old Columbia Pike
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Virginia Beach, VA 23455

Tidewater (804) 460-9080
Peninsula (804) 245-1075

Problem Accounts as of October 8, 1985

C00227	Advanced Technology	SALES
C00425	Maryland Natl Cap Park & Plan	SALES
C00450	Columbia Reasearch	SALES
C00563	XMCO	SALES
C00576	Versar	SALES
G0C026	Department of Justice	SALES
G00037	NTIS	[redacted]
G00054	MDW-FAO	[redacted]
G00059	Naval Medical Command	[redacted]
G00063	1947th HSG	[redacted]
G00068	National Defense Univ	[redacted]
G00100	DLA	[redacted]
G00107	Social Security Admin	SALES
G00128	NIH	[redacted]
G00240	Dept of Army	[redacted]
G00243	Department of Justice	SALES

**Please see Cindy before processing any orders for the customers or performing any service. Thanks.

Sample Invoice Collection Problems

The following documentation represents a few samples of the varied types of circumstances encountered while attempting to collect past due payables from the government. The cover sheet preceeding each invoice gives a brief summary of the collection process.

Ft. Belvoir

Invoice #33649 dated 9/13/85.

On 11/8/85 we called finance. They said they had no invoice or receiving report.

She said she would call the end user and call us back... no response.

On 11/13/85 we called back... she forgot to follow through.

On 11/21/85 we called her again... end user sent invoice but not receiving report.

She told us to call end user.

On 11/21/85 we called end user they said they would send it right away.

On 12/19/85 we called finance... no receiving report.

On 1/9/86 we call finance again... still no receiving report.

On 1/9/86 we called the end user's boss.

She said she would research and call us back... no response.

On 1/22/86 we called and left a message... no response.

On 1/23/86 we called the Supervisor's boss and he said he would research and call us back.

The end user called and said she delivered the paperwork personally to finance.

We called finance to make sure they had it & they still had nothing.

On 1/24/86 we called finance and they now had all the necessary paperwork to pay us.

On 1/31/86 we received payment... no interest.

[illegible]	PAGE
09/13/85	35649

[illegible] Services Inc.

US ARMY INFO SYS MGMT
ATTN: PM, TACHIS, STOP C-150
BETTY PEADE
FORT BELVOIR, VA 22060-5

SHIP TO: US ARMY INFO SYS MGMT
ATTN: PM, TACHIS, STOP C-[illegible]
BETTY PEADE
FORT BELVOIR, VA 22060-[illegible]

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	DATE SHIPPED	TERMS
933	09/12/85	G00270	777	SEE BELOW	UPS	09/13/85	NET 30

[illegible]	QTY. SHIPPED	QTY. B.O.	ITEM NO.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
2			700 '089 PLRD	X 'PALETTE S' ID[illegible] SYSTEM	1,[illegible]	[illegible]
3			[illegible]	[illegible] 35-200[illegible]	[illegible]	[illegible]
[illegible]			[illegible]	[illegible]	[illegible]	[illegible]
				[illegible]	.00	[illegible]

THANK YOU

FIRST PAY

[illegible]

SALE AMOUNT	[illegible]
MISC. CHARGES	[illegible]
SALES TAX	[illegible]
FREIGHT	[illegible]
TOTAL	[illegible]

1947th HSG

Tri-annual maintenance billing in arrears.

1. Invoice #32432 dated 3/26/85.

We called on 5/16/85 and the said they never received an invoice, so we resubmitted the invoice that day.

On 6/24/85 we called finance and they said the check would be cut on 7/4/85.

On 7/9/85 we called the supervisor and he said the check would be cut on 7/19/85.

On 7/24/85 we called the supervisor and he said he turned the problem over to one of his staff members.

We called the staff member and she turned it over to a third person who said it was not submitted to Bolling AFB for payment yet.

We called the supervisor's boss on 7/25/85 and he hand carried it to Bolling AFB on 8/2/85. We received the check with no interest.

2. Invoice #33073 dated 6/25/85

On 8/6/85 we called finance and left a message -no response.

On 8/7/85 we called again... They said they had no invoice and we resubmitted the invoice that same day.

On 9/10/85 we called and she said they received the invoice 19 days later on 8/26/85. We were told that it came back from certification on 9/5/85 and it would be forwarded to Bolling AFB for payment - expected arrival of check was 10/1/85.

On 10/7/85 we called and they said it was still sitting on supervisors desk and had not gone to Bolling yet.

We left two messages for the supervisor on 10/7/85 and received no response.

On 10/8/85 we called the supervisor's boss again and he said to expect payment by 10/16/85.

On 10/24/85 we received payment with no interest.

3. Invoice #33786 dated 9/25/85 (last invoice on tri-annual billing.)

   On 10/8/85 we called the supervisor's boss since he was the only one to help us in the past. He said they didn't receive the invoice.

   On 11/8/85 we called finance and left a message... no response.

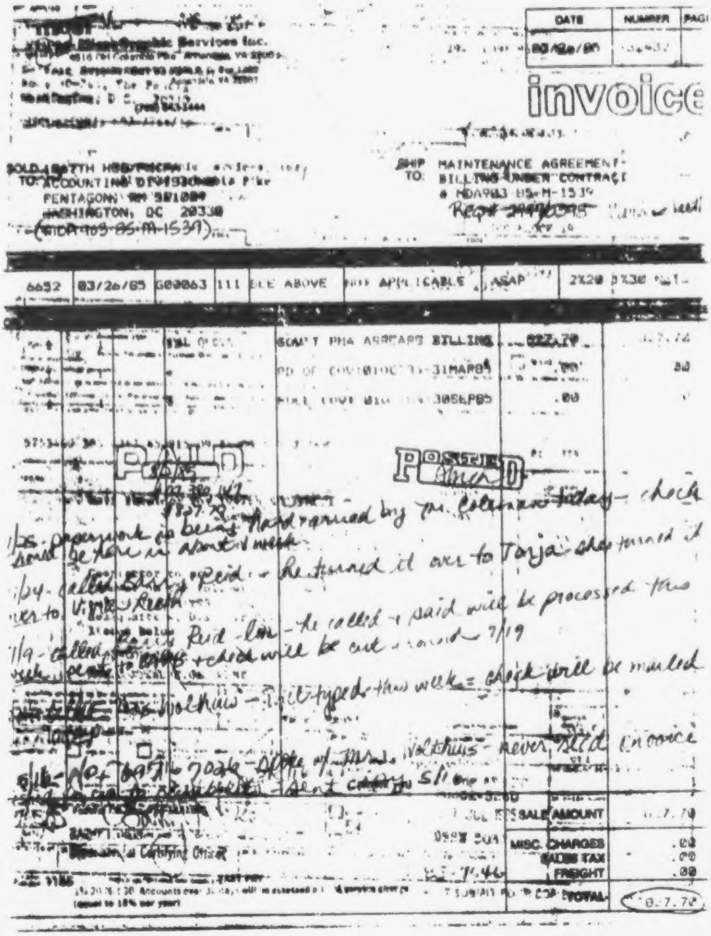
   On 11/18/85 we called finance and left a message... she was out that day... no response.

   On 11/19/85 and 11/21/85 we left messages with no response.

   On 11/21/85 called the supervisor's boss and left a message and he didn't respond.

   On 12/3/85 we hand delivered the invoice again.

   On 12/24/85 we received payment... they took a 1% prompt payment discount.



Graphic Services Inc.

Washington, D.C.

DATE	NUMBER	PAG
03/26/85	[illegible]	

invoice

SOLD TO: ACCOUNTING DIVISION
PENTAGON, RM 5B1000
WASHINGTON, DC 20330
(MDA 903-85-M-1539)

SHIP TO: MAINTENANCE AGREEMENT
BILLING UNDER CONTRACT
MDA903 85-M-1539
~~Req# [illegible]~~

6652	03/26/85	G00063	111	SEE ABOVE	NOT APPLICABLE	ASAP	2%20 [illegible]

GOV'T PHA ARREARS BILLING	827.70
PD OF COV 01OCT84-31MAR85	.00
FULL COVE 01 [illegible] 30SEP85	.00

PAID

POSTED

$827.70

1/25 - paperwork is being hand carried by Mr. Coleman today - check should be there in about 1 week.

1/24 - called [illegible] Reid - he turned it over to Tonja - she turned it over to Vicki Reed

1/9 - called [illegible] Reid - he called & said will be processed this week & check will be cut around 7/19

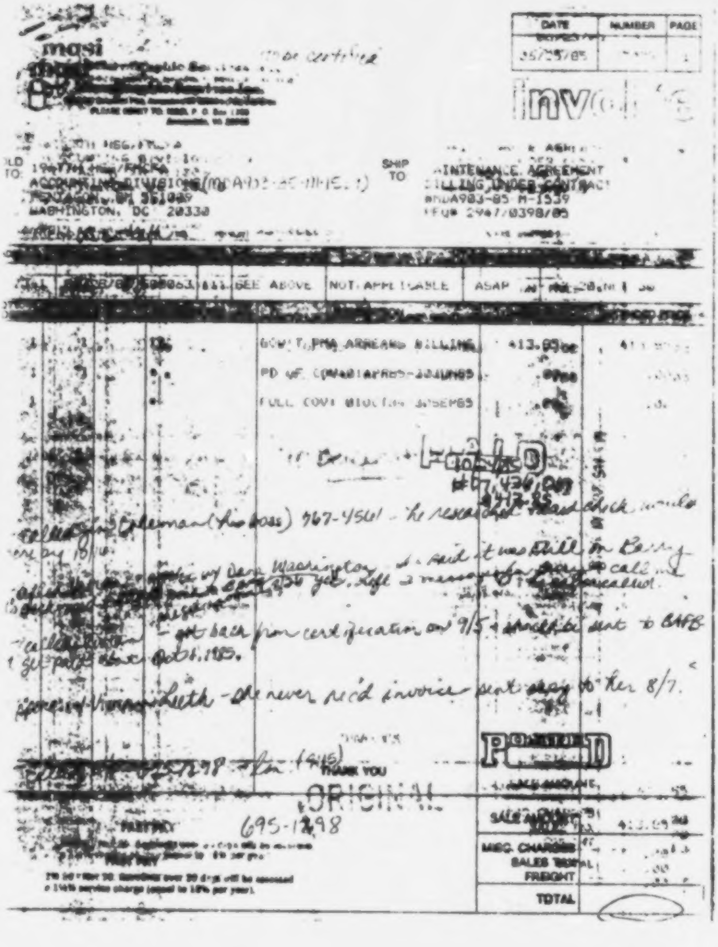
[illegible] Walthaw - [illegible] typed this week - check will be mailed

6/16 - [illegible] office of Mrs. Walthius - never rec'd invoice - sent copy 6/1

Signature of Certifying Officer

SALE AMOUNT	827.70
MISC. CHARGES	.00
SALES TAX	.00
FREIGHT	.00
TOTAL	827.70

Accounts over 30 days will be assessed a service charge (equal to 18% per year)



masi

[illegible] certified

DATE	NUMBER	PAGE
05/25/85	[illegible]	1

INVOICE

SOLD TO: [illegible]
ACCOUNTING DIVISION (MDA903-85-M-1539)
PENTAGON, RM 3B1089
WASHINGTON, DC 20330

SHIP TO: MAINTENANCE AGREEMENT
BILLING UNDER CONTRACT
MDA903-85-M-1539
PO# 2947/0398/85

[illegible]	[illegible]	500063	[illegible]	SEE ABOVE	NOT APPLICABLE	ASAP	[illegible]

GOV'T PMA ARREARS BILLING	413.09
PD OF COVERAGE [illegible]-30JUN85	
FULL GOVT BILLING 30SEP85	

FILED

#7,436.00

Coleman (his boss) 767-4561 - he researched [illegible] check [illegible]

[illegible] by 10/1.

[illegible] Dave Washington - said it was still in [illegible] [illegible] call [illegible]

[illegible] left a message [illegible] called

- got back from certification on 9/5 & should be sent to [illegible]

[illegible] get paid [illegible] Oct. 1985.

[illegible] Ruth - she never rec'd invoice - sent copy to her 8/7.

[illegible] 695-1298 - [illegible] (415)

THANK YOU

ORIGINAL

695-1298

POSTED

SALE AMOUNT 413.09

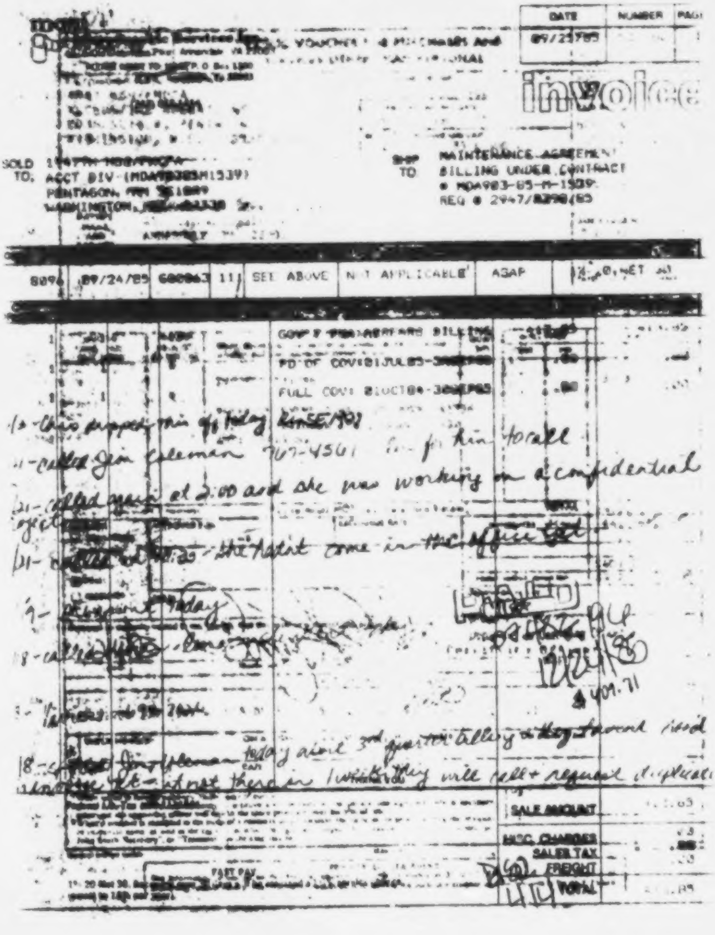
MISC. CHARGES

SALES TAX .00

FREIGHT

TOTAL

[illegible] Service charge over 30 days will be assessed a 1½% service charge (equal to 18% per year).



DATE	NUMBER	PAGE
09/23/85	[illegible]	1

VOUCHER [illegible] NATIONAL

invoice

SOLD TO:
[illegible]
ACCT DIV (MDA[illegible]M1539)
PENTAGON, [illegible]
WASHINGTON, [illegible]

SHIP TO
MAINTENANCE AGREEMENT
BILLING UNDER CONTRACT
MDA903-85-M-1539
REQ # 2947/[illegible]/85

8096	09/24/85	600063	11	SEE ABOVE	NOT APPLICABLE	ASAP	[illegible] NET 30

GOV'T [illegible] BILLING
PD OF COV: 01JUL85-30SEP85
FULL COV: 01OCT84-30SEP85

1- Chris [illegible] today [illegible]
1- called Jim Coleman 767-4561 [illegible] for him to call
21- called again at 2:00 and she was working on a confidential
project
21- [illegible] - she hasn't come in the office yet
7- [illegible] today
8- called [illegible]
3- [illegible]
18- [illegible] Jim Coleman today about 3rd quarter billing & they [illegible]
[illegible] - if not there in 1 week they will call + request duplicate

$ 401.71

12/21/85

SALE AMOUNT
MISC. CHARGES
SALES TAX
FREIGHT
TOTAL

FAST PAY

Bolling Air Force Base

1. Invoice #33124 dated 6/28/85.

   Called finance on 8/6/85 and we were told that the certifying officer received the invoice on 6/30/85.

   We called him and he said he never had the invoice.

   Sent him a copy on 8/6/85.

   We called finance on 8/28/85 and they said the check would be cut next week.

   We called on 9/13/85 and they said they couldn't locate any information so they would research and call back.

   They called and said the check would be to us by 9/20/85.

   We called on 9/18/85 to verify if the check was sent and they said that it was paid but with no interest because they paid early.

   We received the check on 9/23/85.

2. Invoice #32985 dated 6/13/85.

   We called finance on 7/22/85 and they said they never received the invoice.

   Resubmitted invoice on 7/23/85

   On 8/8/85 they returned the invoice and said they had no record of the purchase order.

   They asked for us to send a copy of the purchase order and invoice again.

   On 8/9/85 we mailed the copies.

   On 8/19/85 we called and they said they didn't receive the purchase order or invoice.

   On 8/26/85 we hand delivered the paperwork.

   On 8/28/85 they said the check would be cut next week.

   Two weeks later on 9/13/85 we received payment.

mgsi
MicroGraphic Services Inc
[illegible]
PLEASE REMIT TO [illegible] P. O. Box [illegible]

DATE	NUMBER	PAGE
06/[illegible]		1

INV

SOLD TO: [illegible] AIR FORCE BASE
DET 1, [illegible]
ATTN: [illegible]
WASHINGTON, DC 2033[illegible]

SHIP TO: [illegible] LOADING [illegible]
[illegible]
PENTAGON
WASHINGTON, DC 2033[illegible]

					SHIP VIA	DATE SHIPPED	TERMS
[illegible]	06/12/85	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	1% [illegible]

QTY. ORDERED	QTY. SHIPPED			DESCRIPTION	UNIT PRICE	EXTENDED PRICE
1	1		MDI DE 500 A	[illegible]	2,270.00	[illegible]
1	[illegible]			[illegible]	.00	[illegible]

POSTED

PAID
9/03/85
#07,414,753

[illegible] called [illegible] [illegible] actually paid the [illegible] due [illegible] $2270.00

[illegible] called Selma - [illegible] will be here 9/9 [illegible] need to call [illegible] (707-4038) to find out why [illegible]

called Selma - she couldn't locate any info on it will [illegible] [illegible] to get check here by 9/20.

[illegible] Selma [illegible] [illegible] [illegible] [illegible] will be [illegible] next week [illegible]

[illegible] Walter Green said he never rec'd invoice [illegible] sent him copy [illegible] for him to certify [illegible] back to [illegible]

[illegible] called [illegible] 767-4293 - Desiree [illegible] - problem - Walter Green is certifying - she [illegible] since 6/30 [illegible]

THANK YOU

Federal I.D. [illegible]

767-4293

697-2249

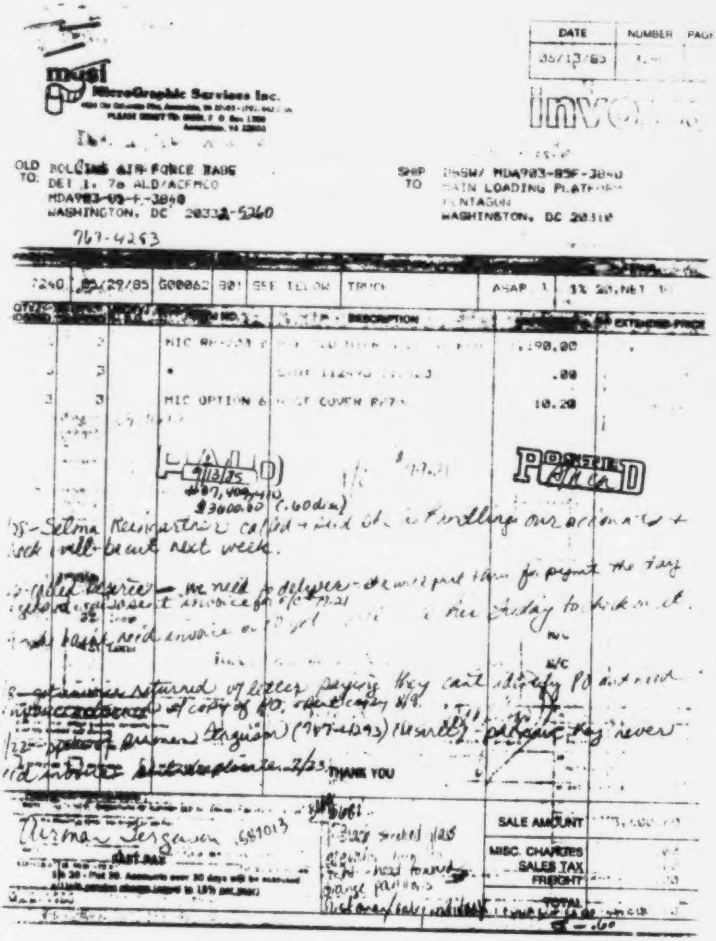
FAST PAY

[illegible] Amounts over 30 days will be assessed a [illegible] service charge (equal to [illegible] per year)

SALE AMOUNT

MISC. CHARGES
SALES TAX
FREIGHT

TOTAL



msi
MicroGraphic Services Inc.

DATE	NUMBER	PAGE
05/13/85	[illegible]	

invo

SOLD TO: BOLLING AIR FORCE BASE
DET 1, 76 ALD/ACFMCO
MDA903-85-F-3840
WASHINGTON, DC 20332-5260
767-4263

SHIP TO: DSSW/ MDA903-85F-3840
MAIN LOADING PLATFORM
PENTAGON
WASHINGTON, DC 20310

7240	05/29/85	G00062	801	SEE BELOW	TRUCK	ASAP 1	1% 20,NET 30

QTY ORDERED	QTY SHIPPED		ITEM NO.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
3	3		MIC RM-[illegible]	[illegible]	[illegible]190.00	
3	3		•	[illegible]	.00	
3	3		MIC OPTION 6	[illegible] COVER [illegible]	10.20	

PAID 9/13/85
#07,409
$3000.00 (.60 dis)

POSTED

[illegible] Selma [illegible] called + said she is handling our [illegible] + check will be out next week.

[illegible] we need to deliver [illegible] for payment [illegible] sent invoice [illegible] Friday to pick it [illegible]

[illegible] need invoice [illegible]

[illegible] returned w/ letter saying they can't identify PO and need [illegible] copy of PO. [illegible]

/22 [illegible] Norman Ferguson (767-4293) [illegible] they never [illegible] invoice [illegible] 2/23.

THANK YOU

Norman Ferguson 681013

SALE AMOUNT	[illegible]
MISC. CHARGES	
SALES TAX	
FREIGHT	
TOTAL	

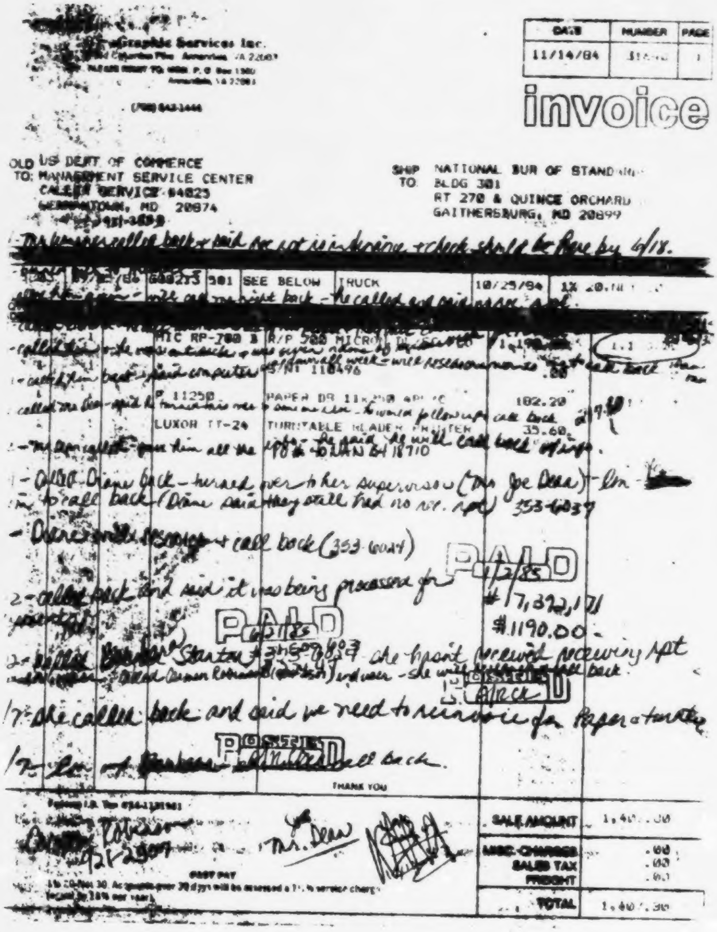
Department of Commerce

Invoice #31640 dated 11/14/84.

Collection calls began on 2/7/85 and the invoice had to be resubmitted twice due to lost invoices.

We were also responsible for obtaining the receiving report, according to finance. 2 1/2 months later the receiving report was located after contacting a supervisor and next level supervisor.

Payment arrived 6/21/85 with no interest.



[illegible]Graphic Services Inc.
[illegible] Columbia Pike Annandale, VA 22003
[illegible] P. O. Box 1380
Annandale, VA 22003

(703) [illegible]

DATE	NUMBER	PAGE
11/14/84	[illegible]	1

invoice

SOLD TO: US DEPT OF COMMERCE
MANAGEMENT SERVICE CENTER
CALLER SERVICE #4825
GERMANTOWN, MD 20874
[illegible]-3899

SHIP TO: NATIONAL BUR OF STANDARDS
BLDG 301
RT 270 & QUINCE ORCHARD
GAITHERSBURG, MD 20899

1- [illegible] called back + said [illegible] is in [illegible] + check should be here by 6/18.

[redacted]

[illegible]	[illegible]/84	000273	301	SEE BELOW	TRUCK	10/25/84	1% 20, NET [illegible]

[illegible] will call me right back - he called and said [illegible]

[redacted]

1	1	MIC RP-700 1	R/P 700 MICRO[illegible]	1,190.00	1,1[illegible]
			S/N 110496	.00	
1	1	P 11250	PAPER DR 11x250 4PK/C	102.20	[illegible]
		LUXOR TT-24	TURNTABLE READER PRINTER	35.60	

- called [illegible] the [illegible] was given [illegible] of [illegible] all week - will research + [illegible] call back
- called [illegible] back [illegible] computer
- called [illegible] [illegible] - [illegible] would follow up + call back
- [illegible] gave him all the info - he said he will call back w/info.
- PO # OMAN 84 18710
1- Called Diane back - turned over to her supervisor (Mr. Joe Dean) - [illegible] to call back (Diane said they still had no rec. rpt) 353-6037
- Diane [illegible] message + call back (353-6024)

PAID 1/2/85

2- called back and said it was being processed for payment

# 7,322,171
$1190.00 -

PAID 1/21/85

2- [illegible] Stanton # 353-6037 - she hasn't received receiving rpt [illegible] Diane Robinson ([illegible]) [illegible] - she will [illegible] back

POSTED [illegible]

1/7- She called back and said we need to reinvoice for Paper + turntable

POSTED [illegible]

1/7- [illegible] [illegible] call back.

THANK YOU

Federal I.D. No. [illegible]

Robinson
[illegible] 921-2907

Mr. Dean

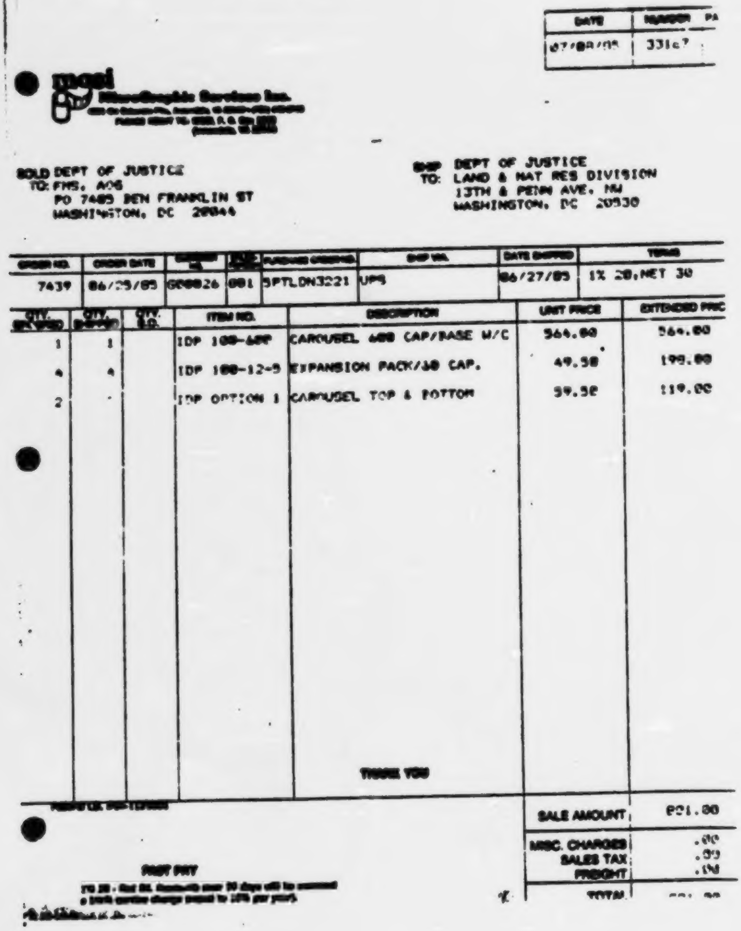
PAST DUE
1% 20-Net 30. Accounts over 30 days will be assessed a 1½% service charge (equal to 18% per year).

SALE AMOUNT	1,40[illegible].00
MISC. CHARGES	.00
SALES TAX	.00
FREIGHT	.00
TOTAL	1,40[illegible]

Department of Justice

Invoice #33167 dated 7/8/85, payment was due on 8/9/85.

Payment arrived on 10/9/85 with a 1% prompt payment discount.



DATE	NUMBER	PA
07/08/85	33167	

mgsi
MicroGraphic Services Inc.
[illegible]

SOLD TO: DEPT OF JUSTICE
FMS, AOG
PO 7485 BEN FRANKLIN ST
WASHINGTON, DC 20044

SHIP TO: DEPT OF JUSTICE
LAND & NAT RES DIVISION
13TH & PENN AVE, NW
WASHINGTON, DC 20530

ORDER NO.	ORDER DATE	CUSTOMER NO.	[illegible]	PURCHASE ORDER NO.	SHIP VIA	DATE SHIPPED	TERMS
7439	06/25/85	G00026	001	5PTLDN3221	UPS	06/27/85	1% 20,NET 30

QTY. ORDERED	QTY. SHIPPED	QTY. B.O.	ITEM NO.	DESCRIPTION	UNIT PRICE	EXTENDED PRIC
1	1		IDP 100-600	CAROUSEL 600 CAP/BASE W/C	564.00	564.00
4	4		IDP 100-12-5	EXPANSION PACK/50 CAP.	49.50	198.00
2	-		IDP OPTION 1	CAROUSEL TOP & BOTTOM	59.50	119.00

THANK YOU

SALE AMOUNT	881.00
MISC. CHARGES	.00
SALES TAX	.00
FREIGHT	.00
TOTAL	[illegible]

[illegible]

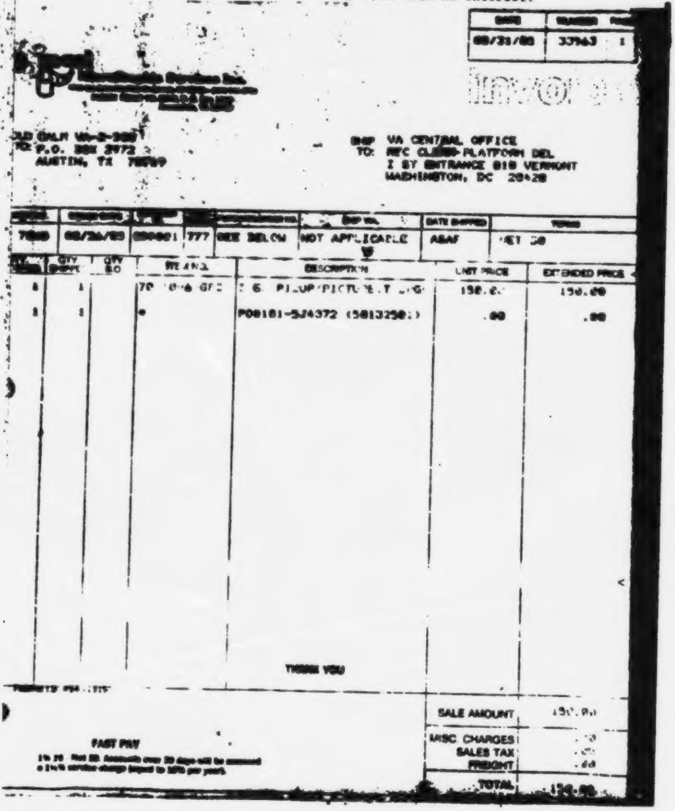
Veterans Administration

Invoice #33563 dated 8/31/85.

Product was ordered 8/26/85 and delivered 8/30/85.

A collection call was made on 10/9/85 and we were told that the money was not authorized until 9/17/85.

Payment arrived on 10/16/85 with no interest.



08/31/85	33563	1

INVOICE

SOLD TO: [illegible]
P.O. BOX 3972
AUSTIN, TX [illegible]

SHIP TO: VA CENTRAL OFFICE
REC CLERK-PLATFORM DEL
I ST ENTRANCE 810 VERMONT
WASHINGTON, DC 20420

					SHIP VIA	DATE SHIPPED	TERMS
[illegible]	08/26/85	[illegible]	777	SEE BELOW	NOT APPLICABLE	ASAP	NET 30

QTY ORDERED	QTY SHIPPED	QTY B.O.	ITEM NO.	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
1	1		[illegible]	[illegible] PICTURE [illegible]	150.00	150.00
1	1		*	PO8101-5J4372 (5813250[illegible])	.00	.00

THANK YOU

SALE AMOUNT	150.00
MISC. CHARGES	.00
SALES TAX	.00
FREIGHT	.00
TOTAL	150.00

FAST PAY

Correspondence with Congressman Wolf

The attached letter was written to Congressman Frank R. Wolf, 10th District, Virginia on May 18, 1986. It served as a formal request for assistance in dealing with the United States Navy's inadequate payment practices and non-compliance with the Prompt Payment Act. The Congressman's response follows.

mgsi MicroGraphic Services Inc.

Three Skyline Place, Suite 1210
5301 Leesburg Pike
Falls Church, Virginia 22041
(703) 824-0300

May 18, 1986

Congressman
Frank R. Wolf
10th District, Virginia
1651 Old Meadow Road
Suite 115
McLean, Virginia 22102

Honorable Frank R. Wolf,

As a small business in Falls Church, Virginia, MicroGraphic Services, Inc. (a Virginia corporation) has enjoyed six successful years of serving commercial and government clients nationwide. Unfortunately we have been encountering a steadily increasing problem with the Navy's non-compliance with the Public Prompt Payment Act.

The Navy comprises approximately 5% of our customer base yet 50% of our past due accounts belong to the Navy. One payment office in particular, DCASR-Philadelphia, has been so inefficient in processing payments that it has become our civic responsibility to bring them to your attention. The first dealing MicroGraphic Services had with them was on January 3, 1986 when we had not been paid on time for an invoice in the amount of $46,195.00, dated November 25, 1985 (our terms are net 30). The invoice was sent to Naval Ordnance Station in Indian Head, Maryland for certification and then it was to be forwarded for payment to Philadelphia.

Sales, Service, Consulting of Microform Systems

After many long distance phone calls, it was discovered that Indian Head had lost the invoice. A representative from our company hand delivered a duplicate original to Indian Head on February 24, 1986. Rather than to leave it up to them to forward it through their appropriate channels, she took it to the end user and had him sign and verify the receipt date of December 3, 1985. She in turn took the signed invoice to the certifying office, had them certify it for payment and mailed it to Philadelphia. After about eight more phone calls we were finally paid on March 31, 1986. The disturbing part was that the Navy considered the payment to be within our payment terms of net 30 and therefore requested no interest to be paid.

Each aspect of the entire transaction seems to be in direct opposition to the conditions of the Prompt Payment Act. First, the invoice date was November 25, 1985, receipt date of the goods was December 3, 1985, a representative from our company saved at least 2 weeks processing time by doing the Navy's job for them, the second copy of the invoice was sent on February 24, 1986 and we didn't get paid until March 31, 1986. Clearly more than 30 days elapsed between the receipt of the invoice, the goods and the subsequent payment arrival. Our second, and current dealing with DCASR-Philadelphia is revealing the same sort of incompetence and lack of consideration for us as a small business requesting payment.

This particular order was shipped to the Naval Military Personnel Command in Washington, D.C. on December 17, 1985. We were instructed that before we could invoice the Navy we had to fill out 6 DD250's (Defense Department receiving documents) and forward them to the end-user for signature of receipt. Not being part of the Department of Defense, we don't stock these forms and were appalled that we were required to not only stock them but complete and fully process them in order to submit an invoice to get paid. Nevertheless, we sent for them and received them on January 9, 1986. That same day we sent 6 copies to the appropriate office and requested them to sign and return the copies to us. After more phone calls and two months of waiting, we were told that instead of sending the signed DD250's to us, the end-user forwarded them directly to the paying station, DCASR-Philadelphia. Our contract administrator requested that we send our invoice to Philadelphia and they would match it up with the DD250 for payment. The invoice was sent on March 10, 1986. On April 8, 1986 we started calling DCASR-Philadelphia to make sure all the paperwork was in order and requested the date we could expect payment. Several times a week from April 8-April 30 we were told from DCASR-Philadelphia that they had no file on our company, no invoice and no DD250. We asked them for assistance but were repeatedly told that it was our responsibility to coordinate paper flow through the various Navy channels. Reminding them that we were not employed by the Department of the Navy never seemed to generate any helpful response.

Finally on April 30, 1986, after months of frustrating phone calls we said that we had gone as far as we could and it would be turned over to our congressman for investigation. Within 5 minutes our entire file was located along with our invoice dated December 30, 1985. There was no DD250 there so we were asked to get one signed by the receiving office and forward it directly to DCASR-Philadelphia. That day we sent another company representative to the Naval Military Personnel Command in Washington to get a signature and receipt date on the DD250. The supervisor signed and even went so far as to state the receipt date as November 14, 1985 (the machine was shipped to her form the manufacturer on December 17, 1985). We tried to convince her that the date was incorrect but she insisted so we left it as is. The same day we sent the DD250 to DCASR-Philadelphia for payment processing. On May 5, 1986 we were called and questioned by DCASR-Philadelphia regarding the ambiguous receipt date and asked what we were going to about it. We suggested they contact their own people in Washington and rectify the situation. To date we have heard nothing about a scheduled payment date.

As a small business, we can't afford not to deal with the Navy, but we almost can't afford to deal with them either. At this point we feel we are due interest on both orders and would appreciate any assistance your office can give us to accomplish this. As well, a congressional investigation as to the payment practices of the United States Navy seems a most necessary next step in solving a problem plaguing many contractors such as ourselves. Please consider all the points made above and determine what action needs to be taken to make the Navy operate more effectively and efficiently. A prompt response concerning your findings on Naval payment practices will be most appreciated.

Sincerely,

Michael R. Ricci
President, MicroGraphic Services, Inc.
Member, AIIM Government Affairs Committee

FRANK R. WOLF
10th District Virginia

Washington Office
130 Cannon Building
Washington DC 20515
(202) 225-5136

Constituent Services Offices
1651 Old Meadow Rd
Suite 115
McLean VA 22102
(703) 734-1500

10 E Market St
Room 4B
Leesburg VA 22075
(703) 777-4422

RECEI

Congress of the United States
House of Representatives
Washington, DC 20515

COMMITTEE ON APPROPRIATIONS
Subcommittees
Transportation
Treasury—Postal Service—General Government
District of Columbia

SELECT COMMITTEE
ON CHILDREN, YOUTH
AND FAMILIES

June 3, 1986

Mr. Michael R. Ricci
President, MicroGraphic Services, Inc.
Three Skyline Place, Suite 1210
5201 Leesburg Pike
Falls Church, Virginia 22041

Dear Mr. Ricci:

Thank you for contacting me regarding the problems which you have been experiencing with the United States Navy.

I have contacted the Secretary of the Navy on your behalf and have requested a complete report which would respond to your questions and concerns. As soon as I have further information, I will contact you. In the interim, if you have additional questions, please do not hesitate to contact me.

With best regards,

Sincerely,

Frank R. Wolf
Member of Congress

FW:gh

Other Comments

MGSI in an attempt to expedite government payments offered prompt payment discounts. Much to our dismay the agencies continued to pay late and kept taking the discount anyway.

It never ceases to amaze our collections personnel that the various departments within an agency are not willing to work within their own channels, for instance the finance department is not willing to assist in acquiring the receiving report from the end user or the shipping and receiving area. They are usually rude and place the responsibility back on the collections person. Why cant they work within their own channels and eliminate the apparent disregard for each other?

Defense Logistics Agency at Cameron Station sent MGSI a booklet and blank DD250 (receiving report forms) to illustrate how to fill out a receiving report. Isn´t this form the responsibility of the government employee to fill out?

It would truly be beneficial to outline and standardize;

What is a proper invoice?

The invoice should be considered received on the earlier date of the two specified in the proposed amendments. This would assure inter-departmental cooperation in quick handling of outstanding payables.

MicroGraphic Services as a concerned small business who has been a loyal government contractor for the past six years appreciates your time in reading the documentation. If you have any further questions please don´t hesitate to call.

ADSC: AN INTERNATIONAL ASSOCIATION OF FOUNDATION DRILLING CONTRACTORS

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Case Pacific Company

June 27, 1986

William B. Montalto, Esq.
Counsel for Procurement Policy
Committee on Small Business
United States Senate
SR-428A, RSOB
Washington, D.C. 20510

Dear Mr. Montalto:

The ADSC is a trade association representing 425 firms engaged in the design, construction, and equipment manufacturing and distribution segments of the foundation drilling industry. The purpose of the association is to advance the knowledge base, and state of the art of the industry through education, research, and information exchange. The ADSC is also charged with representing the business interests of the industry at large.

Many ADSC members perform as subcontractors on federal construction and thus are directly impacted by the payment practices of the federal government and federal prime contractors.

ADSC supports legislation recently introduced by Senator Paul Trible (R-Va.) which is designed to improve agency implementation of the 1982 Prompt Payment Act. The bill, S.2479, would go a long way toward correcting the payment problems many contractors have experienced since the Act's implementation in 1982.

However, Senator Trible's bill does not address the problems of subcontractors on federal procurement. ADSC receives many reports from members who are experiencing payment problems on federal procurement. This is true even when the prime contractor is being paid promptly.

The fact is, Mr. Chairman, that when a subcontractor or supplier believes he will be paid late, he will increase his bid.

P.O. Box 280379 • Dallas, Texas 75228 USA • 214/681-5994

If a subcontractor or supplier fails to identify a slow paying prime contractor before submitting his bid or signing the subcontract, problems are bound to develop on the job. After all, he will not be eager to perform or complete the job as required by the contract.

ADSC believes it is time for Congress to recognize the problems of subcontractors in federal procurement--both for the benefit of these small businesses and for the benefit of the taxpaying public.

Congress has recognized the importance of subcontractors and suppliers to the procurement process in many other instances, such as payment of prevailing wages, affirmative action programs, and claims procedures. It is time for Congress to recognize that federal subcontractors and suppliers should have access to the benefits as well as the responsiblities of federal procurement.

We understand that the American Subcontractors Association has submitted to this committee a proposal to amend the Prompt Payment Act by requiring prime contractors on federal construction to pay their subcontractors in seven days or face the same interest penalties that federal agencies pay if they pay their bills late.

ADSC supports such legislation and urges your committee to seriously consider its adoption.

In addition, we ask that this letter be included in the formal record of the oversight hearing on payment by the federal government held by the Small Business Committee on June 19, 1986.

Sincerely,

Scot Litke

Scot Litke
Executive Director

SL/kb

cc: ADSC Board of Directors
ADSC Past Presidents
ADSC Chapter Presidents

AMERICAN INSTITUTE OF STEEL CONSTRUCTION, INC

GOVERNMENTAL AFFAIRS OFFICE
1629 K STREET NORTHWEST SUITE 400
WASHINGTON D.C. 20006
(202) 466-5548

STATEMENT FOR THE RECORD OF THE AMERICAN INSTITUTE OF STEEL CONSTRUCTION, INC.

REGARDING

PROMPT PAYMENT ON FEDERAL CONSTRUCTION

Submitted to the

Senate Committee on Small Business

William Y. Epling
Vice President,
Government Affairs
American Institute of Steel
Construction, Inc.
1629 K Street, N.W.
Suite 400
Washington, D.C. 20006
(202)466-5548

July 1, 1986

Steel **STANDS** for the future

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STATEMENT FOR THE RECORD OF THE AMERICAN INSTITUTE OF STEEL CONSTRUCTION

The American Institute of Steel Construction (AISC) is pleased to submit this statement for the record in connection with the oversight hearings on the 1982 Prompt Payment Act regarding prompt payment on federal construction.

The statement provides background information on the AISC and the U.S. fabricated structural steel industry. Our statement then discusses the critical need for prompt payment to be extended to subcontractors on federal construction. Extension is required for basic fair play and significantly because it is in the net economic interest of the federal government.

I. General Background

A. The American Institute of Steel Construction (AISC)

AISC, headquartered in Chicago, is a unique voluntary trade association uniting the fabricators of steel framed buildings, bridges and related structures. AISC also serves the erectors, designers and educators who have professional interest in fabricated structural steel structures. AISC has three types of membership: Active, Associate, and Professional.

Active membership is open to companies that fabricate structural steel. Only firms headquartered in the U.S. are eligible. Active membership now totals 394 firms.

Associate membership is open to firms or individuals who sell a product or service related to steel construction (e.g., mill steel producers). Associate membership now totals 111.

Professional membership includes firms or individuals practicing as architects or engineers, or teaching either of these professions in a recognized college or university. Professional membership now totals 2,216.

In the early years of steel-framed construction, the growth of our industry was limited by the lack of standard design principles and descriptive product terminology. Producing mills each rolled different sections or shapes and each mill had its own weight load tables and product specifications. In many cases, these were inconsistent with the standard of other mills. This condition had existed for many years and was the fundamental reason the AISC was formed in 1921. The original objectives for the AISC were thus:

1. to establish a single standard construction manual recognized by building authorities and designers;

2. to establish a set of standard loading tables for all the sections rolled by the various mills; and

3. the establishment of an authority to foster the efficient use of steel that would be welcomed by the mills; engineering profession, architects, building officials and purchasers of steel.

AISC believes it has accomplished those objectives with distinction.

During recent years AISC's traditional strong emphasis on research and engineering has been expanded to encompass a wide range of educational, market research, and producer certification programs. We now have a full time staff of over 50 people and operate under an annual budget of $4.0 million.

Through its 65 year history, AISC has been highly engineering oriented with a strong emphasis on steel research and steel design techniques. It publishes many technical publications including the "bible" of the industry - the AISC Manual of Steel Construction - which contains the well known AISC Code of Standard Practice for Steel Buildings and Bridges and the AISC Specifications for the Design, Fabrication and Erection of Structural Steel for Buildings. These documents are the basis for most steel bridge and building designs and construction contracts in this country as well as in many other parts of the world.

In April 1983 we established a full time office in Washington, D.C. to pursue the fabricated structural steel industry's interests before the Congress, the various federal agencies and with related or allied trade associations.

B. The U.S. Fabricated Structural Steel Industry

The fabricated structural steel industry manufactures custom products for the construction industry. The principal products are steel building frames, bridges and related structures. The leading alternative construction material for these applications is reinforced concrete, which is also widely used throughout the United States. The choice between steel and concrete reflects to a large degree the particular engineering features of each structure, but price is also a major determining factor.

The structural steel fabricator plays a clearly defined and critically essential role in constructing a building or bridge. The fabricator works with the plans and specifications for the structure prepared by architects and engineers to determine the number and type of fabricated steel pieces that will be needed. Using steel shapes and plates purchased from the mill steel producers or steel service centers, the fabricator creates each of the required framing pieces. These fabricated structural steel parts are then properly grouped and transported to the construction site, where the building frame or bridge is assembled by an erecting company or the in-house erecting forces of the fabricator. Typically the fabricator is a subcontractor to the general contractor for the building or bridge.

The U.S. fabricated structural steel industry consists of approximately 1,100 firms, which are typically closely held family businesses. We estimate that the industry now employs approximately 53,000 persons, primarily ironworkers who fabricate steel in our plants. In this sense fabricate means cut, bend, drill or punch, weld or bolt pieces of steel. These ironworkers are supported by estimators, draftsmen, and management personnel.

An industry employing 53,000 persons among 1,100 firms is an industry whose firms averages 48 employees. Thus, the U.S. fabricated structural steel industry is a large group of small businesses.

Steel fabricating firms are independent from the mill steel producers, which themselves generally do not engage in the fabricated structural steel business. Mill steel producers such as Bethlehem Steel Corporation played a major role in steel fabrication until about 11 years ago but they have now largely left our business. It is widely believed that the mills withdrew from fabricating because their labor structures rendered them non-competitive.

Bureau of Labor Statistics data show that employees of the fabricated structural steel industry earn a wage that is about two percent higher than the average industrial wage. About half of our workers are unionized.

Although the U.S. fabricated structural steel industry is separate from the mill or basic steel industry, the economics of the two are closely linked. The fabricated structural steel industry uses over five million tons of mill steel per year. As such it is a very important customer of the mill steel industry. Our total business volume is over $6 billion per year.

Approximately 55% of the cost of fabricated structural steel products is the price paid for mill steel. Thus, design economy in the amount of steel used and the unit cost of the mill steel affect our competitiveness with foreign fabricated structural steel and with concrete and other materials suitable for building and bridge construction.

II. Prompt Payment on Federal Construction

A. 1982 Prompt Payment Act (P.L. 97-177).

This act requires federal agencies to pay their bills within 45 days or pay interest penalties from the 30th day. While the act has been partially effective in getting prompt payment for prime or general contractors (those with direct contracts with the government) it has not led to similar prompt payment for subcontractors.

B. Payment Problems Facing Fabricators as Subcontractors

Fabricators are particularly vulnerable to late or deferred progress payment since the steel frame for building is among the earliest starting and finishing components of the building. Thus fabricators invest in their supplies, principally mill steel, and their shop and field labor early in the project. Because of the inherent quality control involved in steel from its original production, shop fabrication and demonstrable erection in compliance with plans and specifications, it is readily accepted when in place by the general contractor and/or the owner as fully complying with the contract. It is thus critical that the fabricator be promptly paid and not have to wait on completion of any particular phase or the entire project which may be anywhere from a few months to well over a year after the fabrication and erection is done. It should be noted that the typical fabricator is a small business employing some 48 workers. Clearly such small businesses need prompt payment to preserve a sound cash flow.

With assurance of prompt payment fabricators will be able to eliminate that portion of their costs associated with the risk of late payment. This costs savings will naturally flow through the subcontract to the prime contract to the federal government. Thus assured prompt payment is in the net economic interest of the government over and above its interest in fair play to subcontractors who are largely small businesses.

C. The Solution

The AISC believes that Congress should amend the Prompt Payment Act (P.L. 97-177) to require a prime or general contractor on federal construction work to pay his subcontractors within seven (7) days of his receipt of payment or pay interest penalties identical to those faced by the federal government under the act. Such legislation should also insure that any disputes between the prime contractor and the subcontractor as to entitlement for progress payments be resolved prior to the prime submitting his aggregated request to the government for payment. This so that inclusion of the subcontractor's request by the prime will carry a clear and direct obligation to pass promptly the governments payment through to the subcontractor.

Conclusion

For reasons of simple equity and in the overall net economic interests of the federal government, AISC strongly urges that the prompt payment provision of the 1982 Prompt Payment Act be extended to subcontractors.

health industry
manufacturers
association
hima

[illegible]

STATEMENT OF THE HEALTH INDUSTRY MANUFACTURERS ASSOCIATION

UNITED STATES SENATE
COMMITTEE ON SMALL BUSINESS
JUNE 19, 1986

OVERSIGHT HEARING ON THE PROMPT PAYMENT ACT

The Health Industry Manufacturers Association is a non-profit trade association representing 300 manufacturers of medical devices and diagnostic products. Our members are significantly affected by delays in Medicare payment to providers and suppliers. We would therefore like to thank the Committee for focusing on this problem.

The payment delays to providers and suppliers not only threaten the viability of the provider/supplier network but also result in payment delays to our members which curtail our industry's ability to manufacture products that are needed by Medicare beneficiaries. The delivery of high quality products and services to Medicare beneficiaries is therefore placed at the mercy of the Health Care Financing Administration's business practices.

Although the problem of payment delays and its impact is pervasive, it is particularly acute to firms providing home health care to the elderly. Some firms wait in excess of 120 days for payment of claims submitted for goods and services provided under Medicare and have outstanding claims in the hundreds of thousands of dollars. Testimony submitted by the National Association of Medical Equipment Suppliers and the American Federation of Home Health Agencies supports such findings and documents the impact.

When payment delays reach the manufacturer, they are often unable to bear the costs particularly in the case of those manufacturers that are small businesses. Over two-thirds of HIMA's members are considered small manufacturers with less than $20 million in sales. It is these manufacturers that invest most heavily in research and development. One recent survey found that companies under $5 million in sales invested 12 percent of this in research and development. These innovators, barely able to assume the financial burden of expensive and lengthy regulatory requirements, can certainly not afford the chain reaction of long-delayed federal payments to their customers.

We are pleased that the Administration has taken some action to begin to alleviate this problem. The release of an additional $15 million in contractor funding and efforts to reduce the processing and payment cycle to 27 days will help. We support these efforts but believe further Congressional action is reeded. We recommend that the Prompt Payment Act be enforced for Medicare and, if necessary, be amended to clearly specify its application to Medicare.

Thank you for the opportunity to discuss this problem. We offer our assistance to the Congress and Administration to assure timely claims processing for all providers and suppliers.

Respectfully submitted,

Frank E. Samuel Jr.
Health Industry Manufacturers Association
1030 15th Street, N.W.
Washington, D.C. 20005

PRINTING INDUSTRIES OF AMERICA, INC.

1730 North Lynn Street
Arlington, VA 22209
(703) 841-8100

Government Affairs
Department

May 28, 1986

Honorable Lowell Weicker
Chairman, Committee on Small Business
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

We understand the Small Business Committee intends to conduct a hearing on June 19th on S. 2479, legislation to amend the Prompt Payment Act. On behalf of the Printing Industries of America and the National Association of Printers and Lithographers, I wish to express our appreciation to the committee for examining this important small business matter and request that this letter be included in the record of the hearing.

Among the issues which are not addressed by the Prompt Payment Act was extending its application to the Government Printing Office. While the Government Printing Office has for the most part paid contractors promptly, the lack of coverage under the Prompt Payment Act provides no recourse in those cases in which the GPO does not pay according to accepted standards. We believe the omission of the GPO was an oversight rather than an intentional omission and would appreciate your consideration of an amendment to make the Act applicable to GPO.

The Prompt Payment Act is but one of many areas of concern we have with the Government Printing Office. Since the GPO is a Legislative Branch agency is has been exempted from such laws as the Small Business Act and the Freedom of Information Act. As these matters come before the Committee for review, we would appreciate the opportunity to present our views on the effect these exemptions have had on printing contractors.

Thank you for your consideration.

Sincerely,

Benjamin Y. Cooper
Senior Vice President
Government Affairs

HIDA HEALTH INDUSTRY DISTRIBUTORS ASSOCIATION

1111 CONNECTICUT AVENUE, N.W. SUITE 700 WASHINGTON, DC 20036 202-857-1166

ROBERT H. WILBUR
VICE PRESIDENT/GOVERNMENT RELATIONS

May 23, 1986

The Honorable Lowell P. Weicker, Jr.
Chairman
Senate Committee on Small Business
SR-428A Russell Senate Office Building
Washington, DC 20510

Dear Senator Weicker:

The Health Industry Distributors Association would appreciate an opportunity to testify at the hearings on the Prompt Payment Act June 19.

A large number of our members are small businessmen who provide medical equipment (durable medical equipment and oxygen supply equipment) for the use of Medicare beneficiaries in the home. As indicated by the enclosed surveys of our members, payment delays in most cases exceed two months. This is an intolerable delay for small businesses.

The Prompt Payment Act does not at present cover Medicare, only because the bills are paid not directly by the government, but by Part B intermediaries acting as agents of the government. As a result, both the carriers and the Health Care Financing Administration ignore (one might say flout) the intent of Congress in the Prompt Payment Act.

This is inexcusable. In cases where the supplier is unable to take assignment (a decision affected by payment delays) the party that suffers is the Medicare patient. Therefore, both small business and the individuals intended to be protected by the Medicare program are damaged.

We would appreciate the opportunity to bring this to the attention of the Small Business Committee and to ask that the Congress consider amending the Prompt Payment Act to cover this situation.

Sincerely,

Robert H. Wilbur
Vice President/Government Relations

RHW/st
Enclosure

May 8, 1986

HIDA QUESTIONNAIRE
DELAYS IN PAYMENT OF CLAIMS UNDER MEDICARE PART B

	1. Average delay Rental claim DME > $120.00	2. Average delay rental Oxygen Equipment	3. Average delay purchase equip. less $120.00	4. six months ago	5. one year ago
CALIFORNIA					
Blue Shield Corona	90 days	90 days	90 days	worse	worse
Blue Shield Jackson	10-30 days	30-45 days	10-30 days	worse	worse
National Firm Orange	xx	xx	xx	worse	worse
TransAmerica Occidental San Diego	2 1/2 months	xx	2 months	better	better
TransAmerica Occidental Whittier	90 days	90 days	see form	worse	worse
CONNECTICUT					
Cigna Middletown	10-12 weeks	8-10 weeks	8-10 weeks	worse	worse
Conn. Gen Life Insur.	4-5 months	xx	4-5 months	worse	worse
DELAWARE					
Pennsylvania Blue Shield	xx	xx	xx	worse	worse

xx = no remark

	Average delay Rental claim DME > $120.00	Average delay rental Oxygen Equipment	Average delay purchase equip. less $120.00	six months ago	one year ago
FLORIDA					
Boca Raton	xx	2-3 weeks	2-3 weeks	better	xx
ILLINOIS					
BC/BS RockFalls	45-50 days	55-60 days	45-50 days	worse	worse
INDIANA					
BC/BS Elkhant	2-4 months	3 months	3-4 months	worse	worse
BC/BS (Kentucky) Nationwide BC/BS Ind.	59 days	76 days	59 days	better	worse
BC/BS Mass. Waterville	3-4 weeks	3-4 weeks	3-4 weeks	worse	worse
NEW JERSEY					
BC/BS PA Prudential Cherry Hill	3 months	6 weeks	1 month	xx	xx
Prudential Toms River	8-12 weeks	8-12 weeks	5-8 weeks	same	xx
NEW MEXICO					
Equitable Life Assur. Hobbs	90 days	90 days	90 days	better	better
NEW YORK					
BS Western NY Albany	6 months	6-9 months	9 months	worse	worse

	Average delay Rental claim DME > $120.00	Average delay rental Oxygen Equipment	Average delay purchase equip. less $120.00	six months ago	one year ago
Empire BC/BS Hicksville	6-8 weeks	6-8 weeks	6-8 weeks	better	same
BC/BS G NY Larchmont	90-120 days	30-60 days	60-90 days	worse	better
BC/BS Long Beach	2-4 weeks	3-6 weeks	2-4 weeks	better	better
BS W NY Binghampton	4 months	4 months	4 months	worse	worse
BS W NY Binghampton	6 weeks	6 weeks	6 weeks	same	same
NORTH CAROLINA					
Prudential Wilmington	6-8 weeks	8-10 weeks	xx	worse	worse
OHIO					
Nationwide Mutual Ins.	4 week	4-5 weeks	4 weeks	better	better
PENNSYLVANIA					
BS PA Easton	xx	xx	xx	worse	worse
BS PA Luzerne	2 months	3 months	3 months	same	better
BS PA Pittsburgh	see form	2 months	2 months	better	worse
BS Travelers PA Pitts	4-6 months	2 months	3-4 months	worse	worse
BS PA Philadelphia	3 months	6 months	3 months	worse	worse

	Average delay Rental claim DME > $120.00	Average delay rental Oxygen Equipment	Average delay purchase equip. less $120.00	six months ago	one year ago
BS PA Wynnewood	33 days	xx	25 days	xx	xx
BS PA Pottstown	4-6 weeks	6-8 weeks	4 weeks	better	better
PUERTO RICO SSS of PR Ponce	6 months	6 months	6 months	worse	worse
RHODE ISLAND BC/BS RI Warwick	3 months	3 months	2 months	worse	worse
TENNESSEE Medicare Equitable Adm Nashville	90-120 days	90-120 days	60 days	worse	worse
WISCONSIN WPS Madison Madison	21 days	21 days	21 days	same	worse
	2.6 months	2.7 months	2.4 months	20 worse 9 better	22 worse 7 better

* The numbers represent the Arithmetic mean of the actual responses to the specific question.

HIDA HEALTH INDUSTRY DISTRIBUTORS ASSOCIATION

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ROBERT H. WILBUR
VICE PRESIDENT/GOVERNMENT RELATIONS

TO: Executive Committee
Home Health Care Task Force
Ed Wissing

FROM: Robert H. Wilbur

SUBJECT: Contractor Delays in Part B Payments

DATE: April 28, 1986

The following is a summary of information on significant carrier delays received from three national companies. I have conveyed this to John Jansak at HCFA, who called me to ask that we gather this information following the HIDA White House briefing.

-- Indiana. Far behind on all claims. This appears to be due to a system problem. The carrier recognized the problem and is working on it constructively, but has not yet solved it.

-- Oklahoma. Requirements for recertification are far more strict and complex than anywhere else in the country; this is causing long delays in payment where physicians do not recertify the way the carrier expects. Note: Jansak had recently returned from a visit to the Texas and Oklahoma carriers at the time I talked to him, based on complaints from NAMES. He told me he found no significant delays at either carrier and that he thought the recertification procedures were correct. After rechecking with the company which provided me with the information, I have told him we still believe the recertification is excessive but agreed that the problem is not with general delays but only with the delays in recertification.

-- Ohio. Delays due to an unusually large number of claims rejections leading to reviews and in some cases to fair hearings. A large percentage of the initial rejections are approved on review, indicating that the delays caused by this review procedure are inappropriate.

-- Michigan. Far behind, especially on O_2. Some firms only now receiving payments for bills submitted in October/November. One firm says the situation is improving; another that it remains as bad as ever.

-- Blue Cross/Blue Shield of Kansas City. Both DME and O_2 are delayed. High error rate leading to inappropriate rejection of claims.

-- Equitable, Tennessee. Four to six weeks for payment of claims submitted on tape. About 60 days on new O_2 claims. Carrier in midst of computer conversion; situation may be improving.

-- Florida Blue Cross/Blue Shield. Claims from last September and October not yet paid. Repeated requests received for duplicate certificates of medical necessity. Claims submitted since January are coming through more quickly but many old claims not yet paid.

-- Blue Shield/Pennsylvania. Tape to tape payments OK but over 100 days on DME not on tape subject to rent/purchase determinations and over 40 days on O_2.

-- Transamerica Occidental/Southern California. 90-120 days on O_2.

-- Travelers Virginia. Over 50 days on O_2.

RHW/st

STATEMENT OF
THE NATIONAL ASSOCIATION OF MEDICAL EQUIPMENT SUPPLIERS
AMERICAN FEDERATION OF HOME HEALTH AGENCIES

UNITED STATES SENATE
COMMITTEE ON SMALL BUSINESS
JUNE 19, 1986

OVERSIGHT HEARING ON THE PROMPT PAYMENT ACT (P. L. 97-177)

The National Association of Medical Equipment Suppliers (NAMES) and the American Federation of Home Health Agencies (AFHHA) are non-profit trade associations representing suppliers of medical equipment and services for home health care under the Medicare program. On behalf of our members, we would like to thank the Committee for focusing attention on the increasing problem of payment delays to firms providing home health care for the elderly. Our members are increasingly concerned about reductions in program administrative funding and numerous, uncoordinated program changes which have led to significant reimbursement delays and confused beneficiaries, carriers and suppliers alike.

As is the case with other witnesses today, we represent firms which currently wait in excess of 120 days for payment of legitimate claims submitted for goods and services provided under Federal programs. A NAMES member providing Durable Medical Equipment in Puerto Rico reports that he has outstanding claims of $900,000, some of which date back to October of 1984. We feel that the failure of the Department of Health and Human Services' Health Care Financing Administration (HCFA) to abide by the Prompt Payment Act threatens the existence of many firms providing home health care to the nation's elderly.

HCFA takes the position that Medicare does not fall under the purview of the Act. We disagree and are petitioning Congress for relief through clarification. So long as HCFA is allowed to violate the law, there is little incentive for the agency to correct the management deficiencies which threaten the industry's ability to provide the quality home health care upon which so many of the nation's elderly depend

A compelling example of the problems confronting many elderly patients is provided through a narrative supplied by Ms. Kimberly Shank, a Wichita, Kansas, DME supplier:

I have concealed the patient's name to retain confidentiality, however, I would like to give you some background on her.

Patient #1108 is a female in her seventies. She lives with her husband (86 years old) in a tiny, two bedroom bungalow in south central Wichita. Their two children live on the West Coast and due to financial constraints and health problems (one son is a stroke victim himself), they seldom return to Wichita. Because of their advanced age and the patient's long-standing illness they have few friends left on whom they can rely for assistance.

The patient has been on TPN (Total Parenteral Nutrition, IV) since November of 1985. For over one year prior to this she was on Total Enteral Nutrition or tube feeding. She cannot walk so she is confined to a bed and a wheelchair. The wheelchair will not access the bathroom so she must use a commode chair.

Her husband provides total care for her. He transfers her to and from the bed to the wheelchair or commode. He must empty the commode and keep it clean and sanitary. Further, he manages her IV therapy himself. This often involves getting up in the middle of the night to monitor the infusion or change solutions and administration sets.

In spite of the obvious hardships of their situation, this couple is an admirable example of what nice, ordinary people can accomplish in the home setting. The patient is getting excellent, loving care, but obviously it is not an easy existence.

Her husband has steadfastly refused to place her in a nursing home. (If she were to go into the nursing home she would quickly become a Medicaid patient at great expense to the state.)

I wish I could say that couples such as this were the exception. In our business, we see families with this level of commitment and courage every day struggling to provide quality, loving care in their homes. These people are, for the most part, living on Social Security. A high percentage of them are well into their seventies and beyond. Often any savings they may have had have long been exhausted by inflation and/or illness.

This is but one example of the problems confronting firms supplying equipment and services under Medicare. Add to this the financial burdens imposed by HCFA's inability and/or unwillingness to reimburse claims in a timely manner and one develops a clear picture of mismanagement, insensitivity and just plain bad business practice.

To the Administration's credit, some HCFA officials have responded to the current reimbursement problem by making site visits to carriers and working with our associations in what we perceive to be good-faith efforts to correct some deficiencies in carrier and intermediary performance. Where severe problems have been detected, additional funding has been made available. We deeply appreciate these efforts, however, more help is needed. Strict application of the Prompt Payment Act would provide the financial incentive for performance.

We strongly support adequate funding for the administrative expenses incurred by Medicare carriers and intermediaries. Our members feel that it is unrealistic to expect firms charged with administering Medicare programs to absorb the costs associated with increased claims volume, particularly at a time when these firms, as well as providers and suppliers, are being asked to make huge investments in electronic claims processing hardware and software. Inadequate support for carriers at this critical time is unrealistic and has brought Medicare's reimbursement system and suppliers under Medicare virtually to the point of collapse.

Because of delays in claims processing, home health agencies are being hit with costly and disruptive retroactive denials, causing loss of the favorable waiver of liability presumption and loss of eligibility for Periodic Interim Payments (PIP). Agencies so crippled cannot meet payroll, pay the rent, or reimburse suppliers. Under such circumstances, they cannot continue providing services to Medicare beneficiaries.

With delayed payments, home health agencies not receiving PIP -- a set payment every two weeks based on an agency's estimated Medicare costs -- are particularly at risk. Many of these are small agencies, located in rural or underserved areas. They have no corporate or institutional resources to supplement cash flow until reimbursement arrives at some unpredictable date. (While information provided by HCFA indicates a combined figure of 24 percent of hospitals, skilled nursing facilities, and home health agencies receive PIP payments, the percentage of home health agencies on PIP is significantly less. As of January 1986, 48 percent of hospitals were on PIP; the percentage of home health agencies and skilled nursing facilities consequently has to be much lower than the combined 24 percent figure.)

According to Blue Cross and Blue Shield, there are now approximately $4.9 billion in outstanding debts owed Part A and Part B providers. This represents an 88 percent increase over last year's backlog. Yet the FY 1986 Appropriations Committee Conference Reported stated in reference to the 1985 backlog, ". . . under no circumstances should it be allowed to increase."

In the past, HCFA required intermediaries to process 94 percent of home health bills within 30 days; a new policy reduces that figure to 85 percent. Still, we do not believe that anywhere near 85 percent of home health claims are being processed within 30 days.

The 1980s have been a time of reassessment and change for healthcare. Modalities and structures that served Medicare since 1965 have been reevaluated and, in some instances, totally discarded, in favor of newer approaches meeting new objectives. Many of these changes were timely and desirable; the Diagnostic Related Groups (DRGs) are but one example.

The DRGs were a reasoned approach to correct the problems inherent in cost-based reimbursement and, by and large, have been responsibly implemented in ways that permitted Congressional and industry input both in design and implementation. Unfortunately, this open, reasoned approach to social policy development has not been extended to all Part A providers and to the suppliers, physicians and others who provide equipment and services under Part B.

Instead, providers and suppliers under Parts A and B have been subjected to numerous, ad hoc, uncoordinated changes which have confused providers, suppliers, carriers and beneficiaries alike. The results are:

- Numerous suppliers and providers now report Medicare accounts receivable exceeding 120 days, causing severe cash flow problems and, in some cases, documented bankruptcies.
- Carrier statistics, which show increases in Days Work On Hand, do not accurately reflect the magnitude of the problem, both because the average of all Part B claims outstanding (including physicians) does not accurately reflect the significantly larger than average backlog of DME claims, and because these reports do not take into account thousands of claims which have not been entered into the processing system at all. Too often, claims are simply thrown away or left to gather dust.
- Carriers either have been or will be reducing staff levels essential to the timely processing of claims.
- The incentives for large investments in electronic claims media (ECM), which will save time and money over the long run, are being reduced.
- New providers and suppliers entering the field can expect serious cash flow problems which will threaten their ability to provide quality health care. If these conditions persist, competition will be reduced.
- Fewer providers and suppliers will be willing to accept assignment and wait 120 days for reimbursement, thereby shifting financial burdens to beneficiaries, many of whom will be unable to pay for the services and equipment essential to their health and well-being.

To be candid, we are not exaggerating when we say that reimbursement delays are already curtailing our industries' ability to provide equipment and services. We cannot pay our bills. We are borrowing money to meet current financial obligations. And, some suppliers and providers have been forced to seek protection under Chapter 11.

Our carriers and intermediaries are grappling with the same problems as best they can. Budget constraints and increasing workloads are a fact of daily life and likely to remain so in the absence of clear Congressional action. It is clear that the Administration is unwilling or unable to adequately address the problem.

We recommend the following action:

- Enforce the Prompt Payment Act for Medicare.
- Increase appropriations for claims processing.
- If increased appropriations for claims processing are not possible, then make some arrangement whereby claims not processed within 30 days will be paid and subsequently audited with later adjustments for over- or under-payments.

Mr. Chairman, Members of the Committee, thank you for the opportunity to discuss this pressing problem. Our associations stand ready to work with Congress and the Administration in a mutual effort to correct deficiencies in the Part B program. All of us share a profound responsibility in our efforts to provide quality health care to the nation's poor and elderly.

Respectfully submitted,

Thomas M. Antone, President
National Association of
Medical Equipment Suppliers
618 S. Alfred Street
Alexandria, VA 22314

Gary L. Thietten, President
American Federation of Home Health
Agencies
1320 Fenwick Lane, Suite 500
Silver Spring, MD 20910

NAM
National Association
of Manufacturers

JAMES P. CARTY
Vice President
Government Regulation, Competition
& Small Manufacturing

July 10, 1986

The Honorable Lowell P. Weicker, Jr.
Chairman
Small Business Committee
United States Senate
428A Rayburn Senate Office Building
Washington, DC 20510

Dear Mr. Chairman:

The National Association of Manufacturers would like to go on record in support of Senator Trible's bill, S. 2479, Prompt Payment Amendments of 1986.

The experience of our 13,400 members with the original Act has been good, but we believe that the changes called for in S. 2479 are badly needed to close unnecessary loopholes that have developed in the Act.

The federal government should be setting the example for all of us when it comes to paying its bills on time for value received. This bill, when enacted, will go far toward achieving that objective.

Most of our members are small manufacturers who operate on thin margins of profitability and they should not be asked to underwrite slow, haphazard and unfair financial practices of our federal government. We additionally recommend an amendment requiring that subcontractors be paid within a reasonable time after the prime contractor has been paid for work done by the subcontractor.

The NAM looks forward to working with you to gain final passage of S. 2479. We request that this letter be made part of the hearing record.

Sincerely,

1331 Pennsylvania Ave., NW
Suite 1500 - North Lobby
Washington, DC 20004-1703
(202)637-3047

Associated
Builders and
Contractors, Inc.

729 15th Street, N.W.
Washington, D.C. 20005
(202) 637-8800

S. 2479, PROMPT PAYMENT ACT AMENDMENTS OF 1986

The Associated Builders and Contractors (ABC) appreciates the opportunity to comment on the implementation of PL 97-144, the Federal Prompt Payment Act of 1982, and S. 2479, the Prompt Payment Act Amendments of 1986.

ABC is a national construction industry trade association representing 19,000 member firms and their employees. ABC members adhere to the Merit Shop construction concept and believe that construction contracts should be awarded in fair and open competition to the lowest responsible bidder.

Reflecting its philosophy of cost-effective construction practices, ABC applauded the Federal Prompt Payment Act of 1982 when considered and passed by the 97th Congress.

Though ABC felt it was unfortunate that federal agencies needed legislative prompting to comply with normal, common sense business practices, we understood that PL 97-144 went a long way toward making the federal government a more efficient, reliable business partner.

ABC believed PL 97-144 would promote greater competition for government contracts and reduce their cost by eliminating the expenses and headaches incurred by businesses collecting late payments from federal agencies.

In the intervening years since passage of the Federal Prompt Payment Act, most federal agencies have made progress toward complying with its provisions. In addition, most states have passed similar prompt pay statutes.

However, after several years of experience with PL 97-144, ABC also believes it is time to fine-tune it. It is time Congress closed the Act's unintended loopholes and clarified its ambiguities. It's time to put some teeth into the Act.

Therefore, ABC strongly endorses S. 2479. We are grateful for the responsiveness of Senator Trible and the 22 cosponsors of the bill to the concerns raised by contractors who deal with agencies subject to prompt pay rules.

Specifically, ABC supports Section 5 of the bill relating to construction progress payments. While the 1982 Act and its legislative history clearly apply prompt payment requirements to construction progress payments, some federal agencies have chosen to ignore such requirement. By refusing to comply with the Act, and with common business practice, the federal government forces construction contractors to shoulder unfair financial burdens.

S. 2479 eliminates all doubt that federal agencies must make construction progress payments in a timely manner or pay interest on delayed amounts.

ABC also endorses the provision of S. 2479 addressing the issue of retainage.

In 1983, the Office of Federal Procurement Policy issued policy letter 83-1. It eliminated the agency practice of withholding portions of progress payments until project completion. On May 30, 1986, OFPP finally published that policy letter in regulatory form.

ABC welcomes the long awaited OFPP regulation but believes that it should be made statutory so as to leave no room for creative interpretation.

ABC supports the reduction and eventual elimination of the 15 day grace period now provided federal agencies owing payments. Too often, the grace period can be used to extend payment terms from 30 days as allowed in PL 97-144, to 45 days.

Federal agencies have had sufficient time since enactment of the federal prompt pay statute to adjust payment procedures to meet the 30 day deadline. If federal agencies have been serious about implementing the 1982 Act, there should be little question that a grace period is no longer necessary.

ABC also endorses Section 3 of S. 2479 clarifying the definition of "receipt of invoice." By tightening this definition to mean that an agency has received an invoice when (1) the payment office actually receives it, (2) five days after property is delivered, or (3) final performance of a service is actually completed.

Currently, an agency can "lose" an invoice, thereby delaying start of the 30 day time clock.

Finally, ABC backs Section 4 of the bill which requires automatic payment of interest penalties when interest is not paid on late payments.

ABC again believes that existing law requires automatic payment. In practice, however, some agencies require an offended party to officially request penalty payment.

ABC feels that requiring a wronged business to officially request a penalty payment due them because an agency error is an insult. Therefore, the unambiguous clarification in S. 2479 is important.

In summary, ABC, its 19,000 member firms, and their employees urge Congress to swiftly enact the Prompt Payment Act Amendments of 1986.

We appreciate Senator Trible's leadership on this issue and look forward to working with him and his 22 cosponsors in expediting Congressional consideration of this bill.

Painting and Decorating Contractors of America
National Office: 7223 Lee Highway, Falls Church, Va. 22046
(703) 534-1201

Richard W. Monday
Assistant Executive Director

July 2, 1986

The Honorable Lowell P. Weiker, Jr.
Chairman
Committee on Small Business
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Attached is a statement of the Painting and Decorating Contractors of America.

PDCA supports S.2479, the "Prompt Payment Act Amendments of 1986". The association also supports extending the provisions of the 1982 Prompt Payment Act to subcontractors.

We request that this statement be included in the formal record of the Small Business Committees oversite hearings on the 1982 Prompt Payment Act.

Sincerely,

Richard W Monday

Richard W. Monday
Assistant Executive Director

RWM/smn

The Painting and Decorating Contractors of America (PDCA) is an association of approximately 3500 businessmen and women nationwide, most of whom operate small businesses.

Some member firms of PDCA work on federal construction projects primarily as subcontractors. PDCA supported the original Prompt Payment Act and supports the amendments proposed in Senator Trible's bill, S.2479. These amendments would solve many problems, however to be truly effective, we feel that these amendments must be expanded to cover an area that was not incorporated in the original legislation and is not yet included in the current proposal. That is the area of protection for subcontractors on federal contract projects.

The practice of a prime contractor on a federal job receiving payment for a subcontractors work, and holding that money for his own benefit while withholding payment to the subcontractor for a substantial period of time is prevalent enough that a Prompt Payment Act remedy is necessary.

Prime contractors attest to the fairness of the concept of prompt payment for subcontractors. In a joint policy statement agreed to by the Associated General Contractors (AGC), the American Subcontractors Association (ASA), and the Associated Specialty Contractors (ASC), reconfirmed in 1984, all three organizations stated that a prime contractor should pay each subcontractor the amount received from the owner on his account no more than seven days after the prime contractor has received payment from the owner for that work.

PDCA supports the idea that wording should be added to S.2479 requiring that subcontractors on federal contracts be paid within seven days after the prime contractor has been paid for the work done by the subcontractor, or receive interest from him on the overdue amount according to the method for figuring interest in the Prompt Payment Act. Additionally, if three or more payments to a subcontractor are missed, only partially paid, or are made later than seven days after payment to the prime contractor is made, this should trigger a mechanism requiring direct payment to the subcontractor by the contracting agency.

One particular aspect of the subcontractor payment problem is retainage. Withholding a percentage of progress payments due a contractor or subcontractor until completion of a project ostensibly as a security against project approval is often nothing more than a tool to improve cash management. In many cases, subcontractors are victimized through imposition of more stringent retainage requirements by prime contractors than the primes themselves face from the owner. PDCA feels that retainage should be forbidden on federal projects unless the contracting officer can thoroughly justify it.

Thank you for the opportunity to present the views of this association, and for your consideration.

Kraft
INC

John J. Beatty, III
Vice President
Government Relations

July 2, 1986

The Honorable Lowell P. Weicker, Jr.
303 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Weicker:

Kraft, Inc., joins with virtually every sector of private industry in urging your support of S. 2479, a proposed amendment to the Prompt Pay Act. We particularly support section 8(b)(1)(A) which would authorize contract clauses in government procurement contracts which would parallel those in private industry. Parallel provisions in both government and private contracts would not only facilitate contractual relations between industry and government, but would result in lower costs to the government as private companies became able to pass on these efficiencies. We urge your support of S. 2479.

Sincerely,

John J. Beatty, III

John J. Beatty, III

JJB/js

1100 Seventeenth Street, N.W., Washington, DC 20036